



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **AUG 27 2013**

Office: LOS ANGELES, CA

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). An appeal of the denial was dismissed by the Administrative Appeals Office (AAO) and a motion to reopen or reconsider was filed. The motion was granted and the previous AAO decision was affirmed. The applicant is now filing a second motion reopen or reconsider. The motion is dismissed.

The record reflects that the applicant is a native and citizen of [REDACTED] who entered the United States as a lawful permanent resident on [REDACTED] 1998. After having been convicted of two crimes involving moral turpitude not arising under a single scheme of criminal misconduct, the applicant was removed from the United States on [REDACTED] 2003 pursuant to section 237(a)(2)(A)(ii) of the Act. As a result of his removal the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his U.S citizen father.

In a decision, dated September 12, 2011, the field office director found that the record failed to reflect any significant factors which could be considered in the applicant's favor and thus, the underlying reason for the removal could not be overcome. The Form I-212 was denied accordingly.

On appeal, counsel stated that the applicant and his elderly father would suffer hardship if he was not granted permission to reapply for admission. Counsel also stated that the applicant's last conviction occurred over eight years ago and that the applicant had plans to join the Army before his father became sick.

In a decision, dated July 25, 2012, we found that the unfavorable factors in the applicant's case outweighed the favorable factors. We also noted that the applicant appears to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and would require a waiver of this inadmissibility under section 212(h) of the Act.

In a motion, dated August 22, 2012, counsel submitted new evidence in the form of medical documentation for the applicant's lawful permanent resident mother. Counsel stated that the applicant's mother and father were very sick and required the applicant in the United States to take care of them, that there was no other family member able to care for the applicant's father, that the applicant had not committed a crime since 2003, and the applicant never worked illegally in the United States.

In a decision, dated May 6, 2013, we granted the applicant's motion and affirmed our previous decision. We acknowledged that factors in the applicant's favor were his family ties to the United States, but that the record did not establish that his parents were suffering hardships as a result of his absence, which could be considered an additional favorable factor. We also acknowledged that it had been 10 years since the applicant was convicted of a crime, but other than the passage of time, nothing in the record indicated that the applicant had been rehabilitated and would not return to criminal activities upon being admitted to the United States.

Thus, we found the favorable factors that had been established by the record included the applicant's family ties to the United States, his lack of a criminal record since 2003, and his lack of immigration violations. The unfavorable factors in his case included his convictions for two crimes, grand theft and receiving stolen property. Therefore, we found that the unfavorable factors in the applicant's case outweighed the favorable factors such that a favorable exercise of discretion was not warranted.

In a second motion, dated June 3, 2013, counsel submitted a brief, including no new information or reasons for reconsideration. On July 31, 2013, counsel submitted updated medical information regarding the applicant's mother suffering from obesity and arthritis and an updated police clearance from [REDACTED] for the applicant. We note that this documentation does not indicate any new information that has not already been considered. The applicant's lack of a criminal record and his mother's medical condition were considered in May 2013.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel's assertions in his brief are not new and were previously addressed. Similarly, the documentation submitted, although created after the initial decision on motion, represent previously considered issues without indicating what circumstances have changed. The applicant has not clearly articulated any incorrect application of the statute in question or cited to any statutes or precedent cases to support his case.

The motion fails as a motion to reopen because the applicant has not articulated any new facts to be established. The motion fails as a motion to reconsider because it does not demonstrate how the previous AAO decision was based on an incorrect application of law or that the decision was incorrect based on the evidence in the record at the time.

Furthermore, as the applicant appears to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and has not sought or received a waiver of inadmissibility, we could also dismiss the present appeal as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) (an application for permission to reapply for admission is denied, in the exercise of discretion, to an applicant who is statutorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application.)

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion is dismissed.

ORDER: The motion is dismissed.