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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H5

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: JAN 31 2011

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Humphrey

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be rejected as untimely filed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in January 1997. The applicant is married to a lawful permanent resident and has four U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision dated April 8, 2004, the district director concluded that the applicant had failed to show that her qualifying relative would suffer hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly.

In a statement on appeal, dated October 29, 2003, counsel asserted that both individually and cumulatively, the hardship the applicant's spouse would face as a result of the applicant's removal rose to the level of extreme and that the applicant deserved a waiver in the exercise of discretion. Counsel asserted that the applicant was the caretaker of her four U.S. citizen children and that the applicant's spouse would suffer financially and emotionally if the applicant was removed from the United States. He stated that if the applicant was not permitted to remain in the United States, her spouse would be unable to maintain his current employment, which required him to be available twenty-four hours a day.

In addition, counsel stated that prior to being employed with the tree surgery company, the applicant's spouse was employed as a field laborer and would likely have to return to a similar job if he lost his current employment as a result of the applicant's inadmissibility. Counsel stated that this change in employment would cause tremendous financial hardship, as fieldwork paid very little. Counsel stated further that the applicant and her spouse decided that if the applicant could not remain in the United States the children would initially follow their mother to Mexico until they were old enough not to require daycare. Counsel stated that because of his employment situation and the house he owned in the United States, the applicant's spouse could not relocate with the applicant to Mexico. Counsel stated that their situation would be worsened by their financial difficulties and the inability of the applicant's spouse to visit his family in Mexico. He stated that this would impose a tremendous emotional hardship on the applicant's spouse.

Counsel also stated that the applicant's children would not receive the same medical insurance or education in Mexico as in the United States, stating that two of his children had learning disabilities and received special classes through their school for these disabilities. The applicant's spouse stated that there were no schools on the ranch where his family would live in Mexico and that they would try to find private education for his children, but that may not be possible.

In its decision dated May 24, 2007, the AAO noted that the record did indicate that the applicant's spouse was employed with [redacted], earning $13.76 per hour, was guaranteed

to work a minimum of 40 hours per week, and previously worked for a California vineyard management company as a field worker. In addition, the record did show through a letter from the children's school principal that the applicant's two older children were attending after school intervention programs and received extra support in language arts. However, the AAO found that the record did not support the statements regarding the applicant's spouse being required to be available twenty-four hours a day for his work, that he would not be able to meet his financial responsibilities working as a field laborer, nor did it show that the applicant could not find employment in Mexico. The AAO found that the record also lacked documentation to show that the applicant's two children would not be able to find the kind of educational support in Mexico that they find in the United States. Furthermore, the AAO noted that the letter from the principal at the children's school indicated that the children were receiving help in language arts because they were having difficulties with the English language, a problem that would not occur in Mexico where the children would be learning in Spanish. Similarly, the AAO found that no evidence was submitted to show that the applicant's family would no longer receive medical care benefits in Mexico or that they would not qualify for other medical insurance in Mexico. Finally, the AAO found that the record failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States and dismissed the appeal accordingly.

The AAO notes that in order to properly file a motion, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the AAO issued its decision on May 24, 2007 and the applicant's motion was received on January 14, 2009, over one year after the AAO decision was issued. Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing a motion, unless it is demonstrated that the delay was reasonable and was beyond the control of the applicant. We find no evidence here that the delay was reasonable and beyond the control of the applicant. Thus, the AAO must reject the motion as untimely filed.

The AAO notes that submitted with the motion to reconsider is a brief from counsel and a report concerning educational delays of children educated in Mexico. The AAO finds that a motion to reconsider must 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 Service policy. The AAO finds that even if the motion were filed timely, the record would not have met the evidentiary burden for the previous decision of the AAO to be overturned.

As the motion was untimely filed, the motion must be rejected.

ORDER: The motion is rejected.