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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

DATE: **MAR 30 2012** Office: MEXICO CITY (SANTO DOMINGO)

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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,

Handwritten signature of Perry Rhew in black ink.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen and reconsider will be dismissed.

The applicant is a native and citizen of the Dominican Republic 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 or attempted to procure entry into the United States by fraud. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Acting District Director*, dated July 24, 2008.

On appeal, counsel stated that the Acting District Director applied an incorrect standard of law in ruling the applicant's husband would not suffer extreme hardship if the applicant's waiver application were denied. *See Notice of Appeal or Motion (Form I-290B)*, received on August 19, 2008. The AAO found that the applicant was eligible to apply for a waiver under section 212(i). However, the AAO concluded that the applicant failed to establish extreme hardship to a qualifying relative, as required by the Act. Consequently, the appeal was dismissed. *See Decision of the AAO*, dated August 4, 2009.

After the AAO dismissed the appeal, counsel for the applicant filed a motion to reopen and reconsider. The regulation at 8 C.F.R. § 103.5(a) lists the filing requirements for motions to reopen and reconsider. Section 103.5(a)(1) states that any motion to reopen or reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider with the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. Additionally, the cover letter that accompanied the appeal dismissal states, "[a]ll documents have been returned to the office that originally decided your case. . . . All motions must be submitted to the office that originally decided your case." The record reflects that the motion initially was mailed to the AAO, though the Santo Domingo Field Office is the office that originally decided this case. On November 5, 2009, that office received and processed the instant motion. The AAO issued its decision on August 4, 2009, 93 days before the motion was properly filed. Accordingly, the AAO concludes the motion was not timely filed.

An applicant's failure to file a motion within the required timeframe may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the applicant's control. *See* 8 C.F.R. § 103.5(a)(1)(i). The applicant has failed to demonstrate that the delay in filing the motion was reasonable and beyond his control.

Moreover, 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any

judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a), it must be dismissed for these reasons.

ORDER: The motion is dismissed.