



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 30 2013** Office: MEXICO CITY, MEXICO

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), and Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under sections 212(a)(9)(B)(i)(II), 212(a)(9)(A)(i), and 212(a)(9)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II), 1182(a)(9)(A)(i), and 1182(a)(9)(C)(i). The applicant seeks a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with her lawful permanent resident husband.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212) accordingly. *See Decision of the Field Office Director*, dated July 21, 2009. On appeal, the AAO found that section 212(a)(9)(C)(i) of the Act does not apply to the applicant; however, the AAO found the applicant inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having sought admission to the United States by falsely claiming to be a U.S. citizen. Consequently, the appeal was dismissed because no waiver is available to the applicant. *See Decision of the AAO*, dated March 12, 2012.

After the AAO dismissed the appeal, counsel for the applicant filed a motion to 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 Mexico City Field Office is the office that originally decided this case. On May 2, 2012, that office received and processed the instant motion. The AAO issued its decision on March 12, 2012, 51 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 her 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

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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.