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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

HL4

[REDACTED]

FILE: [REDACTED] Office: SAN FRANCISCO, CA

Date: FEB 08 2011

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:

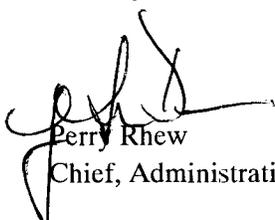
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and a motion to reconsider. The matter is now before the AAO on a second motion to reconsider. The motion to reconsider will be dismissed. The application remains denied.

The applicant is a native and citizen of Mexico who, on February 4, 2000, appeared at the Calexico, California port of entry. The applicant presented an I-586 border crossing card bearing the name [REDACTED]. The applicant was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. The applicant failed to provide her true identity to immigration officers. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud. On February 4, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) under the name "Rosa Maria Salazar-Perez."

On June 17, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on her behalf by her naturalized U.S. citizen spouse. On the same day, the applicant filed the Form I-212, indicating that she resided in the United States. The Form I-485 indicates that the applicant reentered the United States without inspection on February 14, 2000. On June 2, 2009, the Form I-485 was denied. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 remain in the United States and reside with her U.S. citizen spouse and U.S. citizen stepchild.

The field office director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated June 2, 2009.

On appeal, counsel contended that the field office director erred in finding the applicant ineligible to apply for permission to reapply for admission because the applicant, despite having entered the United States without inspection after having been removed, should be permitted to seek permission to reapply for admission because she is eligible to apply for adjustment of status under section 245(i) of the Act. Counsel contended that section 245(i) of the Act should trump the requirements of section 212(a)(9)(C)(ii) of the Act mandating that an applicant reside outside the United States for a period of ten years after his or her last departure. *See Counsel's Brief*, dated July 21, 2009. In support of his contentions, counsel submitted only the referenced brief.

On October 6, 2009, the AAO dismissed the applicant's appeal because she was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and ineligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. *Decision of AAO*, dated October 6, 2009.

In the first motion to reconsider, counsel contended that the field office director and the AAO incorrectly applied *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9th Cir. 2007), to the applicant because it is impermissibly retroactive and the applicant relied upon *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). Counsel contended that the applicant is eligible for a waiver of the ten year bar under section 212(a)(9)(C)(iii) of the Act because she was under the undue influence and abuse of an alien smuggler when she presented herself at the Calexico, California port of entry.¹ Counsel contended that the applicant's due process rights were violated when she was summarily removed.² Counsel contended that the field office director and the AAO violated the applicant's Fifth Amendment rights as the retroactive application of *Gonzales II* infringes on the fundamental right to keep a family together.³ Counsel contended that the applicant's spouse will suffer hardship if the applicant is denied admission to the United States. See *Brief in Support of Motion to Reconsider*, dated November 15, 2009. In support of his motion to reconsider, counsel submitted the referenced brief and psychological documentation.

In the second motion to reconsider, counsel submits a brief setting forth the same, identical arguments he set forth in his first motion to reconsider. See *Brief in Support of Motion to Reconsider*, dated September 14, 2010. In support of his motion to reconsider, counsel submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

The regulation at 8 C.F.R. § 103.5(a) provides, in pertinent part:

(3) Requirements for motion to reconsider.

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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The regulation at 8 C.F.R. § 103.5(a)(4) further provides that a motion that does not meet applicable requirements shall be dismissed. As noted previously, counsel submits the same arguments in this second motion that he submitted when filing the first motion. In its last decision, the AAO adequately addressed counsel's arguments and found them unpersuasive. As counsel has failed to establish that the decision to deny the application was based on an incorrect application of law or Service policy, the motion to reconsider is dismissed for failing to meet applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed. The order dismissing the appeal will be affirmed.

¹ To meet the exception under section 212(a)(9)(C)(iii) of the Act, the applicant must be a VAWA self-petitioner. The record contains no evidence that the applicant has been granted such status based on the filing of a Form I-360 petition pursuant to section 204(a)(1)(A)(iii) or (B)(ii) of the Act.

² The AAO does not review any matters that fall under 8 C.F.R. § 235.

³ Constitutional issues are not within the appellate jurisdiction of the AAO.