



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H6

DATE: DEC 19 2012 OFFICE: MEXICO CITY FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 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 with the field office or service center that originally decided your case by filing a 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 District Director, Mexico City, Mexico. A subsequent appeal 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In a decision dated August 7, 2009, the Field Office Director concluded that the applicant did not establish that his U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly. A Form I-290B, Notice of Appeal or Motion, was timely filed on September 10, 2009. On June 28, 2012, the AAO issued a decision dismissing the appeal.

Counsel filed Form I-290B, Notice of Appeal or Motion, on July 27, 2012. On Form I-290B, Part 2, Counsel indicated that "I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days." As explained on the cover sheet for the AAO decision, an applicant who believes the AAO incorrectly applied the law or who wishes to submit additional information may file a motion to reconsider or a motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii). The AAO notes that the regulations do not provide for an administrative appeal of an AAO decision.

Moreover, even Form I-290B was taken as a motion to reconsider, it must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet the criteria for a motion should be dismissed. A motion that meets the criteria should be granted, the application or petition reopened and a new decision rendered. 8 C.F.R. § 103.5(a)(4).

On Form I-290B, Part 3, counsel did not *specifically* identify any incorrect application of law or Service policy in the AAO decision. Moreover, counsel indicated that a brief and additional evidence would be submitted to the AAO in support of the motion. The AAO did not receive a brief or additional evidence. As a result, the AAO finds that the applicant's Form I-290B did not meet the criteria identified in 8 C.F.R. § 103.5(a)(3). In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. The motion is dismissed.

**ORDER:** The motion is dismissed.