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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**

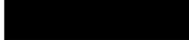


H6



Date: **JUL 05 2012**

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

FILE: 


IN RE:

Applicant: 

APPLICATION:

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

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 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,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico and the 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 will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 admission within ten years of his last departure. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse and children.

The District Director concluded that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *See Decision of the District Director*, dated August 24, 2006.

On appeal, the AAO concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *See Decision of the Administrative Appeals Office*, dated October 28, 2009.

On November 30, 2009 counsel for the applicant filed *Form I-290B*, Notice of Appeal or Motion to the Administrative Appeals Office. On the Form I-290B, in Part 2, counsel indicated that he was filing a motion to reopen and reconsider by marking boxes E and F. *See Form I-290B*.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel states that new facts include the applicant having recently learned that a “notary” who helped prepare/file her immigration documents is being investigated by the Attorney General of Texas for “the illegal practice of law.” No supporting affidavits or documentary evidence have been submitted in this regard. Further, while evidence of medical treatment for a child, [REDACTED] has been submitted, the record contains no birth certificate or other documentation showing that [REDACTED] is the child of the applicant and/or his spouse. Similarly, the record does not contain a birth certificate for a child, Jennifer, or documentary evidence corroborating claims that she has a cardiac problem. Counsel contends that the applicant’s spouse relies on U.S. government assistance and that she has health insurance in the United States which she will lose in Mexico, but submits no supporting evidence. Moreover, counsel discusses country conditions in Mexico but submits no corroborating reports. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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. 8 C.F.R. § 103.5(a)(3). Counsel has failed to assert that the AAO's 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)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 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." Counsel has failed to include with the motion 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 shall be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be dismissed for this reason.

ORDER: The motion will be dismissed.