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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
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Services

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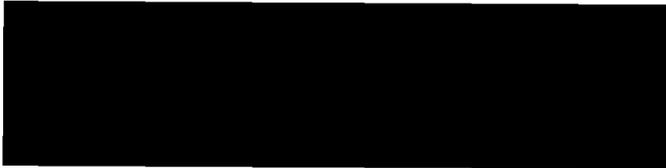
DATE: **MAY 01 2012** Office: CHICAGO, IL

FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)

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 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 waiver application was denied by the Field Office Director (FOD), Chicago, Illinois. 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 Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I) for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant is married to a lawful permanent resident and seeks waiver of inadmissibility in order to reside with her husband in the United States.

The FOD concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, her legal permanent resident spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated September 28, 2007.

On appeal, counsel contended that a waiver of inadmissibility was no longer needed as more than three years had already passed since the applicant's May 2001 departure. *See Notice of Appeal or Motion (Form I-290B)*, received on October 26, 2007. The AAO found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act and eligible to apply for a waiver under section 212(a)(9)(B)(v). 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 June 4, 2009.

After the AAO dismissed the appeal, counsel for the applicant filed a motion to reopen and reconsider with an attached brief. *See Notice of Appeal or Motion (Form I-290B)*, received on June 29, 2009. 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." 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.

ORDER: The motion is dismissed.