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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



H4

Date: **MAY 30 2012** Office: MEXICO CITY (CIUDAD JUAREZ) FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Thank you,

A handwritten signature in cursive script that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Mexico City (Ciudad Juarez), Mexico, denied the waiver application. 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, the husband of a United States citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to 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 one year, and again seeking admission within ten years of the date of the applicant's departure. The applicant 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 order to reside in the United States with his U.S. citizen wife.

In a decision, dated March 5, 2007, the field office director concluded that the applicant had not demonstrated that denial of the waiver application would result in extreme hardship to a qualifying relative.

The AAO, in a decision dated December 3, 2009, concurred with the field office director that extreme hardship to a qualifying relative had not been established, as required by the Act. The AAO found that the applicant had not shown how the hardship his spouse was facing rose to the level of extreme hardship. Consequently, the appeal was dismissed.

The applicant filed a Notice of Appeal or Motion (Form I-290B), dated December 30, 2009, with a letter and additional documentation attached. 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). 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's spouse's letter indicates that she and the applicant now have a child together who was born on May 11, 2009 and that having this child without the applicant to help raise is very difficult emotionally and financially for her. The documentation submitted on motion by the applicant's spouse includes her daughter's birth certificate and financial documentation. Although the applicant has submitted new facts and supporting documentation in support of his motion to reopen, the record does not overcome the previous finding of the AAO.

The motion shall be dismissed for failing to meet the requirement set forth in 8 C.F.R. § 103.5(a)(1)(iii). 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 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 meet this regulation.

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)(1)(iii)(C), it must be dismissed for this reason.

ORDER: The motion is dismissed.