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

(b)(6)

U.S. Citizenship and Immigration Services

Date: FEB 14 2013 Office SACRAMENTO FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 212(a)(9)(B)(v) of the Immigration and Nationality Act, 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.

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 in accordance with the instructions on 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 Field Office Director, Sacramento, California, and 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 who entered the United States without inspection in 1988 at 16 years of age. The applicant remained in the United States until her early 30s. She was removed from the United States in October 2005. In December 2005, the applicant re-entered the United States without inspection. The applicant was found to be inadmissible to the United States under 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 more than one year. The applicant, therefore, 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 addition, the applicant was found inadmissible under section 212(a)(9)(C)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I) and (II), based on the applicant's entry without being admitted after having been unlawfully present in the United States for an aggregate period of more than one year and after being previously removed from the United States.

The field office director concluded that there was no waiver available to the applicant based on her inadmissibility under section 212(a)(9)(B)(v) of the Act because she had not waited outside the United States for 10 years as required by law. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director,* dated August 10, 2009.

On February 16, 2012, the AAO concurred with the field office director that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act and 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 AAO noted that as the applicant was ineligible for relief at this time, no purpose would be served in discussing whether she had established extreme hardship to a qualifying relative or whether she merited a waiver as a matter of discretion. The appeal was dismissed accordingly. *Decision of AAO,* dated February 16, 2012.

On motion to reopen and reconsider, the applicant noted that she had initially entered the United States as a minor and she had not been fully aware of the implication or legalization procedure and consequence of entering and re-entering without permission. She further noted that she has been a model resident of the United States, has a young minor child with admirable behavior and scholastic record, she works remedial labor, she refuses to accept any financial assistance from government resources and is unable to relocate to Mexico as she has no means of financial support and has never lived in Mexico as an adult. *See Form I-290B, Notice of Appeal and Attachment,* dated March 4, 2012.

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

> (2) *Requirements for motion to reopen.*
>
> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.....

(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.

As noted above, the AAO found that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act and 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.[1]

The record clearly establishes that the applicant is currently present in the United States, was outside the United States for only two months after her October 2005 departure, and has been in the United States since December 2005. The applicant does not dispute this fact. The AAO therefore found that the applicant was ineligible to apply for permission to reapply for admission, irrespective of the hardship claims submitted by the applicant.

On motion, the applicant does not assert that the decision of the AAO was based on an incorrect application of law or Service policy and does not provide any pertinent precedent decisions in support of the motion. Further, no new facts are asserted and no affidavit or documentary evidence is submitted. The motion therefore does not meet the requirement of a motion to reconsider or a motion to reopen. Thus, the motion to reopen and reconsider is dismissed and the order dismissing the appeal is affirmed.

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

[1] As previously noted, an alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).