

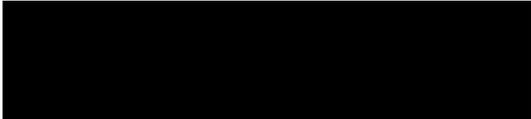
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D. C. 20536



AUG 19 2003

FILE:  Office: Vermont Service Center Date:

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The order was affirmed by the AAO on two subsequent motions to reopen. The matter is now before the AAO for a third time, on a motion to reconsider. The motion will be dismissed and the previous director and AAO decisions will be affirmed.

The applicant is a native and citizen of El Salvador who was present in the United States without a lawful admission or parole on October 14, 1994. On October 17, 1994, an Order to Show Cause was served on the applicant. On June 16, 1995, an immigration judge denied her application for asylum and granted her until July 17, 1995, to depart the United States voluntarily in lieu of deportation (removal). On January 6, 1997, the Board of Immigration Appeals dismissed the applicant's appeal and granted her 30 days to depart voluntarily in lieu of removal. She failed to depart. The applicant is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously ordered removed who seeks admission within 10 years of removal. The applicant seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to remain in the United States with her U.S. citizen husband.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The AAO affirmed the director's decision on appeal, and reaffirmed the decision on two subsequent motions to reopen.

The issues set forth by the applicant in her current motion for reconsideration (her desire to remain with her husband, her good moral character, her lack of a criminal record and her desire to remain and work in the U.S.) have been thoroughly discussed in the prior director and AAO decisions. Moreover, many of the letters submitted by the applicant in the present motion regarding her good moral character, were previously submitted by the applicant, and the remaining letters do not constitute new or material evidence in the applicant's case.

8 C.F.R. § 103.5(a)(2) states that "[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."

8 C.F.R. § 103.5(a)(3) states, in pertinent part, that:

A motion for reconsideration 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 . . . [and] 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)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed."

The applicant in this case has not claimed or established that the previous director and AAO decisions were based on an incorrect application of law or Service policy. Additionally, the applicant has failed to present any new facts or evidence such that her motion could be considered a motion to reopen.

The burden of proof in these proceedings rests solely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet her burden in this case and the present motion to reconsider will be dismissed.

ORDER: The previous director and AAO decisions are affirmed and the present motion to reconsider is dismissed.