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

PUBLIC COPY

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



SEP 04 2009

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:

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 waiver application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Guatemala who was present in the United States (U.S.) without a lawful admission or parole on January 26, 1996. The applicant was ordered removed from the U.S. in absentia by an immigration judge on December 22, 1998. The applicant did not depart the United States. The applicant was found to be inadmissible to the U.S. 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). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The director concluded that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the application accordingly. The AAO affirmed the director's decision on appeal.

In the present motion to reconsider the applicant reasserts that he did not receive a Notice to Appear and that he was unaware of the deportation proceedings and removal order against him. The applicant asserts further that he is a person of good character and that it would be difficult to return to Guatemala because of the crime and the fact that he wants to legalize his status and form a family in the United States. The applicant submitted several letters attesting to his good moral character.

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

(a) Motions to reopen or reconsider

. . . .

(2) Requirements for motion to reopen. 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.

. . . .

(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.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

. . . .

The issues raised in the applicant's motion to reconsider were thoroughly addressed in the prior AAO decision, and the applicant failed to establish any error in the AAO or director's decisions. Moreover, the applicant failed to identify or submit any new or material facts or evidence pertaining to his inadmissibility.¹ Because the applicant failed to identify any erroneous conclusion of law or statement of fact in his appeal, the motion will be dismissed.

ORDER: The appeal is dismissed and the previous decisions of the District Director and the AAO will be affirmed.

¹ The January 7, 2002 AAO decision states that the applicant asserted he did not receive a notice of the hearing, that he was a person of good moral character and that he had a U.S. citizen girlfriend and wanted to remain in the U.S.