



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 27152450

Date: APR. 28, 2023

Motion on Administrative Appeals Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant, a native and citizen of Mexico, was found inadmissible as an individual who has been unlawfully present in the United States for an aggregate of more than one year and subsequently entered the country without being admitted. Section 212(a)(9)(C)(i)(I) Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I). He seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii). Permission to reapply for admission is a discretionary exception to this inadmissibility, which may be granted for those who seek admission after residing abroad for ten years following their last departure. *Id.*

The Director of the Nebraska Service Center (Director) denied the Applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), concluding that he is ineligible to seek permission to reapply for admission until he has remained outside the United States country for the requisite ten-year period since his last departure in December 2021. Section 212(a)(9)(C)(ii) of the Act. We summarily dismissed the appeal because the Applicant did not identify specifically any legal or factual error in the Director's decision on his Form I-290B, Notice of Appeal or Motion and did not submit his appeal brief and/or additional evidence to us within 30 days of filing the appeal as indicated on his Form I-290B. He now files the instant motion to reopen now before us. Upon review, we will dismiss the motion.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought. The Applicant bears the burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The Applicant has not demonstrated that reopening is warranted. In support of the motion, he submits a brief and additional documents he previously intended to submit on appeal, including his appeal brief. He admits on motion that he mistakenly sent the appeal brief and supporting documents to the wrong location and he does not dispute that these documents were thus not properly filed with us as required when we dismissed his appeal. See 8 C.F.R. § 103.3(a)(2)(i) (stating that the appealing party must submit an appeal on Form I-290B and also must submit the complete appeal including any supporting brief and documents as indicated in the Form I-290B instructions within 30 days of filing the appeal). The instructions for Form I-290B further clearly state that any appeal brief and/or

evidence submitted *after* filing a Form I-290B “*must be sent directly*” to us. On motion, the Applicant concedes that there was no error in our prior decision summarily dismissing the appeal, and his evidence on his motion does not establish new facts that overcome the basis for the summary dismissal. Therefore, his motion does not meet the requirements for reopening at 8 C.F.R. § 103.5(a)(2).<sup>1</sup>

Additionally, reopening is not warranted here because his motion to reopen and supporting evidence does not establish the Applicant’s underlying eligibility for the Form I-212, as he asserts only that the waiver application should be granted as a matter of discretion. He does not challenge, and our review of the record otherwise supports, the Director’s conclusion that he is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and statutorily ineligible for permission to reapply for admission to overcome his inadmissibility as he has not remained abroad for the requisite ten-year period since his last departure in December 2021. The Applicant’s new evidence on motion thus does not establish his eligibility for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act.

**ORDER:** The motion to reopen is dismissed.

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<sup>1</sup> The Applicant also requested a fee refund, which we decline. *See* 8 C.F.R. §§ 103.2(a)(1) and 103.2(a)(7)(ii).