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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED]

Office: California Service Center

Date:

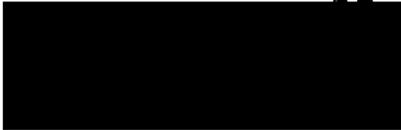
MAR 27 2001

IN RE: Applicant: [REDACTED]

APPLICATION:

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

IN BEHALF OF APPLICANT:



Public Copy

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

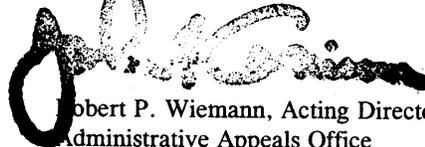
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was present in the United States without a lawful admission or parole in April 1983. He was ordered deported by an immigration judge and he was removed from the United States on May 20, 1983. Therefore he is inadmissible under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii). The applicant was present in the United States again without a lawful admission or parole in September 1983 and without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). The applicant was apprehended and released on bond on October 27, 1983. He breached that bond and has remained in the United States ever since.

The applicant is married to a lawful permanent resident, and he seeks permission to reapply for admission into the United States under § 212(a)(9)(C)(ii) of the Act, 8 U.S.C. 1182(a)(9)(C)(ii), to remain with his family in the United States.

The director determined that the applicant was mandatorily inadmissible under § 212(a)(9)(C)(II) of the Act, 8 U.S.C. 1182(a)(9)(C)(II) and denied the application accordingly.

On appeal, counsel states that the applicant is not subject to the provisions of § 212(a)(9)(C)(II) of the Act because that provision only became effective after April 1, 1997.

Section 212(a)(9) ALIENS PREVIOUSLY REMOVED.-

(C) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.-

(i) IN GENERAL.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under § 235(b)(1) [1225], § 240 [1229a], or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.-Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from

foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

An appeal must be decided according to the law as it exists on the date it is before the appellate body. See Bradley v. Richmond School Board, 416 U.S. 696, 710-1 (1974). In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

Pursuant to § 212(a)(9)(C)(i) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or sought to enter the United States without inspection are permanently inadmissible.

The statute makes an exception for aliens seeking admission who, prior to applying for admission and after remaining outside the United States for at least 10 years since their last departure, have obtained permission to reapply for admission. This ground of inadmissibility applies only to aliens who have attempted to re-enter or actually have re-entered the United States without being inspected and admitted or paroled.

For the purposes of § 212(a)(9)(C) of the Act, time in unlawful presence may accrue prior to April 1, 1997. In addition, when measuring time spent unlawfully present in the United States, the time is measured cumulatively for purposes of § 212(a)(9)(C) of the Act.

The applicant was ordered deported by an immigration judge and he was removed from the United States on May 20, 1983. He unlawfully reentered the United States in September 1983 without permission to reapply for admission and has remained in the United States since that date. Because he has not remained outside the United States for at least 10 years since his last departure, the applicant is ineligible to apply for permission to reapply for admission under § 212(a)(9)(C)(ii) of the Act. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.