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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: 

Office: Vermont Service Center

Date: 07 JAN 2002

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)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 Guatemala who was present in the United States without a lawful admission or parole in March 1994 and applied for asylum in July 1994. On June 12, 1996, an Order to Show Cause was served on the applicant. On July 6, 1998, the applicant withdrew his applications for asylum and withholding of deportation and an immigration judge granted him until January 6, 1999, to depart voluntarily in lieu of removal. The record reflects that he departed the United States on January 6, 1999, and appeared at the American Embassy in Guatemala on January 12, 1999. That verification was received through official channels on January 28, 1999, by the Service office in Hartford, Connecticut.

The director denied the application after concluding that the unfavorable factors outweighed the favorable ones.

On appeal, the applicant states that he is not a criminal, is a person of good moral character, has two U.S. citizen children, has filed his income tax returns, helps in his community, and has been in the United States for more than 13 years.

The record reflects that the applicant was present again in the United States without a lawful admission or parole as evidenced by a driver's license issued to him on June 30, 1999. Therefore he is subject to section 241(a)(5) of the Act, 8 U.S.C 1231(a)(5).

Section 241(a)(5) of the Act, provides that:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

The applicant departed voluntarily from the United States under an order of deportation on January 6, 1999. He has subsequently reentered unlawfully and is now unlawfully present in the United States. Since the applicant is subject to the provisions of section 241(a)(5) of the Act, he is not eligible for any relief under this Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.