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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: [REDACTED] Office: Vermont Service Center

Date: 07 JAN 2002

IN RE: Applicant: [REDACTED]

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 rejected. The director's decision will be withdrawn, and the matter will be remanded to him for further consideration and action.

The applicant is a native and citizen of Colombia who was present in the United States without a lawful admission or parole on March 19, 1996. On March 20, 1996, an Order to Show Cause was served on the applicant. On April 30, 1996, an immigration judge granted the applicant's request for a change of custody status and released the applicant upon the posting of a \$1,000 bond. On May 15, 1996, an immigration judge in Phoenix, Arizona, granted the applicant a change of venue to the immigration court in Newark, New Jersey.

For some unknown reason, the district director in Phoenix, Arizona, demanded the applicant to appear for an interview at the Phoenix Service office on September 22, 1999, and the record is devoid of evidence that venue had been returned to the immigration court in Phoenix, Arizona. The applicant failed to appear, and the district director breached the bond for failure of the applicant to surrender for deportation when the alien was only requested to appear for interview at the Phoenix office, and while he was under the jurisdiction of the Newark court and not the Phoenix court. It appears that the bond has been improvidently breached.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, the applicant submits a letter from a physician stating that the applicant was seen at St. Luke's Hospital in New York City on August 25, 1999, for right renal colic. The physician states that the applicant was treated, given medication and advised to rest. The applicant states that he is not a criminal, is married to a U.S. citizen and is not working illegally.

The present record is devoid of evidence that the applicant ever had a deportation hearing before an immigration judge in the Newark court. The record is devoid of evidence that he has ever been ordered deported or removed. Therefore, the director's decision will be withdrawn, and the record will be remanded to him for further action to either (1) enter a new decision based on an immigration judge's decision in a deportation proceedings showing that the applicant was ordered deported or removed and which renders the applicant inadmissible to the United States, or (2) to declare the present application moot.

ORDER: The appeal is rejected. The matter is remanded to the director for further action pursuant to the foregoing discussion and the entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.