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

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



FILE  Office: California Service Center

Date: APR 21 2003

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)

PUBLIC COPY

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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 which 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 application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The director's decision will be withdrawn, and the matter will be remanded for entry of a new decision.

The applicant is a native and citizen of El Salvador who was present in the United States without a lawful admission or parole on November 29, 1985. An Order to Show Cause was issued on November 29, 1985. On April 8, 1987, an immigration judge granted the applicant until January 8, 1988, to depart voluntarily in lieu of deportation. On March 18, 1988, the applicant's motion to reopen deportation proceedings was denied. An appeal of that decision was filed with the Board of Immigration Appeals (the Board) on April 1, 1988. On April 10, 1990, the Board dismissed the applicant's appeal. He was ordered to surrender for deportation on July 13, 1990. The applicant appeared before a consular officer on July 12, 1990, to have his July 3, 1990, departure verified. Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii).

On July 30, 1990 the applicant was present in the United States again without a lawful admission or parole, and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony).

The applicant married [REDACTED] a native of El Salvador, on June 13, 1991, while in deportation proceedings and after his felonious reentry, and he is the beneficiary of an approved Petition for Alien Relative. The applicant 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 determined that the applicant was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The director concluded that the applicant was not eligible for any exceptions or waivers and denied the application accordingly.

On appeal, the applicant states that he has been living in the United States for the past 16 years and has a son born here. He states that he was ordered deported and he left, but due to the civil war he was forced to return to save his life.

The provisions of section 212(a)(9)(B) became effective on April 1, 1997. No one will have accrued 180 days of unlawful presence before September 27, 1997, and no one will have accrued 1 year of unlawful presence until April 1, 1998. Bureau officers should not consider any waiver application under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), filed by an alien who has not yet triggered the three or ten-year bar by departing the United States on or after April 1, 1997.

The applicant in this matter has not departed the United States on or after April 1, 1997, and has not triggered the ten-year bar. Therefore, he is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The appeal will be rejected, and the director's decision will be withdrawn. The matter will be remanded to him for entry of a new decision on the Form I-212 application which, if adverse to the applicant, shall be certified to the AAO for review.

It is further noted that the applicant is a registered American Baptist Church (ABC) class member with a pending asylum application. As such, he is protected by the provisions of the ABC Settlement Agreement and cannot be removed from the U.S. until his asylum application has been adjudicated.

ORDER: The appeal is rejected. The director's decision is withdrawn. The matter is remanded for further action consistent with the foregoing discussion and the entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.