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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: SAN ANTONIO, TEXAS Date:

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)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT: [redacted]

identifying 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 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 that 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 for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212 application) was denied by the District Director, San Antonio, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 41-year old native and citizen of Mexico. On January 25, 1988, the applicant was found to be inadmissible to the United States by an immigration judge and was ordered deported (removed). The record indicates that the applicant was again placed in deportation (removal) proceedings in 1992. 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), in order to live with his U.S. citizen wife and children.

The director determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(2)(B), 212(a)(6)(C)(ii), and 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1182(a)(2)(B), 1182(a)(6)(C)(ii), and 1182(a)(9)(A)(i) for having been ordered removed from the United States, falsely claiming United States citizenship, having been convicted of two or more offenses for which the aggregate sentence to confinement was five years or more, and having been convicted of a crime involving moral turpitude. The director determined that no favorable factors were found in the applicant's file or in his I-212 application. The director listed the unfavorable factors including an extensive criminal history and record of immigration violations. The I-212 application was denied accordingly.

On appeal, counsel for the petitioner asserts that the applicant is eligible for a waiver of grounds of inadmissibility. Counsel stated that she would submit a brief and or additional documentation within ninety days of the appeal. More than six months have lapsed since the date of the appeal and nothing more had been added to the record.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) states in pertinent part:

> (9) Aliens Previously Removed.-
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> (A) Certain aliens previously removed.-
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> (i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in

> the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
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> * * *
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> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Approval of an I-212 application requires that the favorable aspects of an applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

This office finds the following favorable factors: the applicant has a United States citizen wife and children.

The negative factors are as follows: the applicant was ordered deported twice and subsequently reentered without permission. The applicant has been convicted of auto theft (burglary of vehicle) on four occasions and has three DWI (driving while intoxicated) convictions over a span of eleven years.

This office finds that the unfavorable factors in the applicant's case outweigh the favorable factors.

In discretionary matters, the applicant bears the full

burden of proving that he merits an exercise of discretion by the Secretary of Homeland Security ("Secretary"). *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant in this case has failed to establish that he warrants a favorable exercise of discretion.

ORDER: The appeal will be dismissed.