

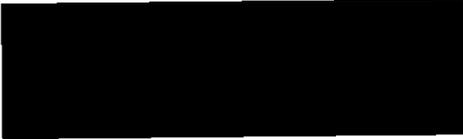


U.S. Department of Justice  
Immigration and Naturalization Service

**114**

**PUBLIC COPY**

OFFICE OF ADMINISTRATIVE APPEALS  
25 Eye Street N.E.  
WLLB, 3rd Floor  
Washington, D.C. 20536



FILE:

Office: Nebraska Service Center

Date: **JAN 06 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)

IN BEHALF OF APPLICANT:

**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 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 that 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, Nebraska Service Center. A subsequent appeal and motion to reopen were dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a second motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be reaffirmed.

The applicant is a native and citizen of Mexico who was initially present in the United States without a lawful admission or parole in April 1978. An Order to Show Cause was served on him in April 1984. On April 24, 1984, an immigration judge ordered the applicant deported to Mexico, and he was deported on April 27, 1984. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. 1182(a)(9)(A)(ii). On May 30, 1984 the applicant was again present in the United States 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 a native of Mexico on November 14, 1992. His wife became a naturalized U.S. citizen on March 29, 1999. They have two U.S. citizen children. 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 remain in the United States.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal and again on the first motion to reopen.

On second motion, counsel reviews the guidelines promulgated in Matter of Lee, 17 I&N Dec. 275 (Comm. 1978), and states that the denial has clearly demonstrated a punitive attitude that inadequately weighs equities as liabilities.

8 C.F.R. § 103.5(a)(2) provides that a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

8 C.F.R. § 103.5(a)(4) provides that a motion which does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the director and the Associate Commissioner in their prior decisions. Since no new issues have been presented for consideration, the motion will be dismissed.

**ORDER:** The motion is dismissed. The order of December 17, 2001, dismissing the appeal is reaffirmed.