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

HA

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



FILE

Office: Vermont Service Center

Date:

JUN 24 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)

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 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 was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on February 1, 1997. On January 8, 1998, at the age of 16 years and 4 months, he was served with a Notice to Appear. There is no order of removal in the record. The record contains a control sheet reflecting that the applicant was ready for voluntary departure on February 4, 1998. The applicant obtained the necessary documentation and airline tickets and departed the United States on February 9, 1998. On February 12, 1998, an immigration judge ordered the proceedings terminated.

It is noted that the applicant is currently present in the United States in an unspecified status, and he has been in this country for at least five years. It is not indicated when or how he returned.

The applicant seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), to legalize his status.

The record fails to contain an order of removal by the immigration judge. The applicant was a juvenile at that time, and it appears he departed voluntarily on February 9, 1998, and the proceedings were terminated on February 12, 1998. Upon review of the present record, it is concluded that the applicant was not deported or removed and is, therefore, not inadmissible under section 212(a)(9)(A)(ii) of the Act and does not require permission to reapply for admission. Accordingly, the appeal will be rejected. The director's decision will be withdrawn, and the application will be deemed unnecessary.

ORDER: The appeal is rejected. The director's decision is withdrawn and the application is deemed unnecessary.