



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 02 2004

IN RE: [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)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was removed from the United States on June 7, 2001 pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act). Subsequently, the applicant reentered the United States without inspection by an immigration officer and without first obtaining permission to reapply for admission to the United States. 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 reside in the United States with his lawful permanent resident parents.

The director determined that the applicant is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act. The I-212 application was denied accordingly. *Decision of the Director*, dated August 27, 2003.

On appeal, the applicant asserts that he has lived in the United States almost all of his life and has no family in Mexico. The applicant contends that he is responsible for supporting his parents in the United States. *Letter from Antonio Cortes*, dated September 17, 2003.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

(9) Aliens Previously Removed.-

(A) Certain aliens previously removed.-

(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.

(ii) [A]ny alien . . . who-

(I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.

(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 [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the 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).

The favorable factors in the application are the hardship imposed on the applicant's parents by the applicant's inadmissibility to the United States and the applicant's lack of a criminal record.

The unfavorable factors in the application include the fact that the applicant is subject to reinstatement of his removal orders.

Section 241(a) of the Act states in pertinent part:

- (5) Reinstatement of removal orders against aliens illegally reentering. - If the Attorney General [Secretary] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is *not* subject to being reopened or reviewed, the alien is *not eligible and may not apply for any relief under this Act*, and the alien shall be removed under the prior order at any time after the reentry. (emphasis added)

The applicant reentered the United States, without inspection, after being removed. The applicant failed to apply for permission to reenter prior to his reentry and therefore, is subject to reinstatement under section 241(a)(5) of the Act.

The AAO notes that an applicant's prior residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978). The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.