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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:



Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:



AUG 09 2004

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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 The Director's decision will be withdrawn and the matter remanded to him for further consideration and action.

The applicant is a native and a citizen of Mexico who was present in the United States without a lawful admission or parole on September 3, 1999. Information in the record of proceeding indicates that on February 7, 2002 the applicant may have been ordered removed by an Immigration Judge pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i) for having been present in the United States without being admitted or paroled. The applicant may have been removed from the United States on February 12, 2002, and may have reentered the United States on an unknown date after his removal without a lawful admission or parole, without permission to reapply for admission in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony) and married a U.S. citizen on August 18, 2003. If the forgoing is accurate, the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 and reside with his spouse and children.

The Director determined that the applicant is inadmissible under Section 212(a)(9)(C) of Act and is not eligible and may not apply for any relief since 10 years have not passed since his last departure and denied the Form I-212 accordingly. *See Director's Decision* dated December 17, 2003.

Section 212(a)(9)(C) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.-Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

- (1) the alien's having been battered or subjected to extreme cruelty; and
- (2) the alien's--
 - (A) removal;
 - (B) departure from the United States;
 - (C) reentry or reentries into the United States; or
 - (D) attempted reentry into the United States.

To recapitulate, the Director stated that the applicant entered the United States on September 3, 1999, and was removed on February 12, 2002. He reentered the United States after his removal without a lawful admission or parole and without permission to reapply for admission and has resided here since that date. He is therefore subject to section 212(a)(9)(C)(i)(I) of the Act.

On appeal, filed on December 22, 2003, the applicant states that he has never been arrested in the United States, has never been in front of an Immigration Judge and he thinks someone is using his personal information. The applicant further states that he is submitting a separate brief and evidence with his appeal. To this day, more than seven months later, no documentation has been received by the AAO.

Before the AAO can make a decision on the appeal, the identity of the applicant must be established. It is not clear from the record of proceedings whether [REDACTED] the applicant, a [REDACTED] the individual who was in custody in the Otero County Jail and subsequently removed from the United States, are the same person. The photographs of both individuals contained in the record of proceedings, although similar, do not prove 100% that they are the same person. Additionally the printed signatures of the two individuals are not so close as to prove conclusively that the applicant and the individual who was deported are the same person. There is no indication that an official forensic examination was conducted to ascertain whether the pictures or printed names were in fact the same. Furthermore, the record of proceedings fails to reveal whether the applicant was fingerprinted and his fingerprints compared with the individual who was in custody in the Otero County Jail. For these reasons, the AAO finds that it cannot be stated conclusively that the applicant and the individual who was deported are the same person. The AAO requests that in order to resolve this, that the applicant be scheduled for a complete set of fingerprints in order to establish his identity.

In view of the foregoing, the previous decision of the Director will be withdrawn. The application is remanded to the Director for reconsideration of the issues stated above and entry of a new decision, which, if adverse to the applicant, will be certified to the AAO for review accompanied by a properly prepared record of proceedings.

ORDER: The Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.