

PUBLIC COPY

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



H4

DEC 07 2004

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

LIN-02-011-50407

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 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 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 on September 3, 1983, entered the United States in possession of an immigrant visa based on his marriage to a U.S. citizen. On March 31, 1992, an Immigration Judge order the applicant deported from the United States after it was determined that he had entered into a marriage for the primary purpose of circumventing the immigration laws of the United States. The applicant departed the United States on July 6, 1992. On June 2, 1993, the applicant was admitted into the United States in possession of an immigrant visa as the parent of a U.S. citizen, without permission to reapply for admission after deportation or removal. On August 19, 1999, a Notice to Appear was issued by the Boise, Idaho District Office. On February 15, 2000, the applicant failed to appear for a removal hearing and he was subsequently ordered removed in absentia by an Immigration Judge. The applicant departed the United States on January 25, 2001. The applicant is inadmissible under 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 travel to the United States to reside with his children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *Director's Decision* dated April 26, 2004.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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.

(iii) Exception. - Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens

who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, the applicant's son submits a letter in which he does not dispute the fact that the applicant was involved in a fraudulent marriage, but states that he did so in order to provide some security for his family. In addition he states that when the applicant applied for his immigrant visa in 1993, based on a Petition for Alien Relative (Form I-130) filed by one of his U.S. citizen children, the applicant did not reveal that he was previously deported based on advice from his attorney. The applicant's son further states that the applicant is in poor health and his condition requires monthly to semimonthly doctor's visits. Furthermore, he states that the applicant has been a hard working and law-abiding resident of the State of Idaho.

The AAO finds that the evidence contained in the applicant's alien file clearly establishes that the applicant was previously involved in a sham marriage for immigration purposes.

Section 204(c) of the Act states in pertinent part that:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General [now Secretary, Homeland Security, "Secretary"] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

Records of Citizenship and Immigration Services (CIS) reveal that a Form I-130 was filed on behalf of the applicant on January 27, 2003, and was approved by the Director Nebraska Service Center on August 25, 2004. Based on section 204 of the Act, the applicant was clearly not eligible to be approved as the beneficiary of a Form I-130. The AAO notes that in the present case the Director must follow the regulations and statutory law provided for in section 204 of the Act, and that, given the determination of a sham marriage, the Director had no authority to approve a Form I-130 filed on behalf of the applicant.¹

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

¹ The AAO notes that based on the evidence in the record, a CIS revocation of the applicant's present I-130 visa petition would be proper. See Section 205 of the Act, 8 U.S.C. § 1155.

A review of the documentation in the record of proceeding reflects that the applicant is subject to the provision of section 204(c) of the Act, and he is not eligible for any relief under this Act. Therefore no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.