

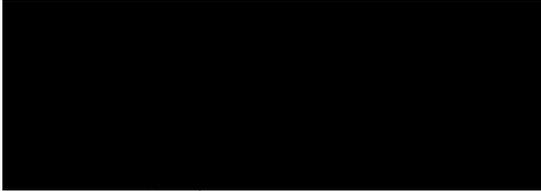
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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DEC 07 2004

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

WAC-99-135-52852

IN RE:

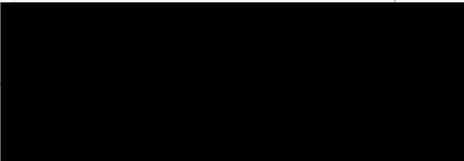
Applicant:



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:



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

The applicant is a native and a citizen of Mexico who was present in the United States without a lawful admission or parole on or about February 11, 1996. On April 2, 1996, based on an order by an Immigration Judge the applicant was deported from the United States pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act). The record reflects that the applicant reentered the United States on April 6, 1996, without a lawful admission or parole and without permission to reapply for admission. The record further reflects that the applicant was removed from the United States on August 28, 1998, pursuant to section 241(a) of the Act. The applicant reentered the United States on an unknown date after his August 28, 1998, removal without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). He is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 and reside with his family.

The Director determined that section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief. The Director then denied the application accordingly. See *Director's Decision* dated September 26, 2001.

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 aliens 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, filed on October 30, 2001, counsel states that he would submit a brief and/or evidence to the AAU within 60 days. To this day, more than three years later, no documentation has been received by the AAO.

The record of proceeding clearly reveals that the applicant was removed from the United States on August 28, 1998, and reentered illegally on an unknown date. An indication that the applicant returned to the U.S. is the fact that he was arrested for traffic violations on September 9, 1999. He has never been granted permission to reapply for admission and he is therefore subject to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5) which states:

Detention, release, and removal or aliens ordered removed.-

(5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General 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 reentry.

Section 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provision of section 241(a)(5) of the Act, and he is not eligible for any relief under this Act.

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.

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. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.