

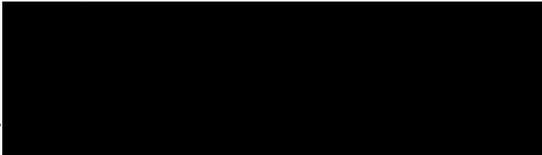
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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DEC 23 2004

FILE:



Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:

MYNOR ROLANDO QUINTANA

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 after removal was denied by the Director, Vermont Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Guatemala who on October 26, 1999, at the Hidalgo, Texas port of entry, was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under this Act. Consequently, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States on an unknown date, after his October 26, 1999, removal, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326. The record further reveals that the applicant was previously removed in 1985 after being present in the United States without a lawful admission or parole. The applicant is inadmissible under section 212(a)(9)(A)(i) the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He now 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 section 241(a)(5) of the Act, 8 U.S.C. § 1231(a) (5) applies in this matter and the applicant is not eligible for any relief. In addition the Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act. The Director then denied the application accordingly. *See Director's Decision* dated December 8, 2003.

On appeal the applicant submits a statement and letters of recommendation regarding his character. In his statement the applicant states that in 1999 he had traveled to Guatemala in order to visit his sick mother. He was denied advance parole and out of desperation he obtained a United States passport in order to return to the United States and continue his residence with his family. He further states that his family would suffer extreme hardship if he was removed from the United States and asks for forgiveness and a chance to legalize his status in the United States.

The record reflects that the applicant has two additional Service files A77 622 705 and A93 274 257, and that he has filed an Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000). The applicant's possible inadmissibility should be adjudicated based on the laws and regulations governing the LIFE Act.

The regulation at 8 C.F.R. 245a.18 states in pertinent part:

Ineligibility and applicability of grounds of inadmissibility.

(c) Waiver of grounds of inadmissibility. Except as provided in paragraph (c)(2) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to ensure family unity, or when the granting of such a waiver is otherwise in the public interest. If available, an applicant may apply for an individual waiver as provided in paragraph (c)(1) of this section without regard to section 241(a)(5) of the Act.

(1) Special rule for waiver of inadmissibility grounds for LIFE Legalization applicants under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act. An applicant for adjustment of status under LIFE Legalization who is inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the Act, may apply for a waiver of these grounds of inadmissibility while present in the United States, without regard to the normal requirement that a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, be filed prior to embarking or re-embarking for travel to the United States, and without regard to the length of time since the alien's removal or deportation from the United States. Such an alien shall file Form I-690, Application for Waiver of Grounds of Excludability Under Sections 245A or 210 of the Immigration and Nationality Act, with the district director having jurisdiction over the applicant's case if the application for adjustment of status is pending at a local office, or with the Director of the Missouri Service Center. . . .

Section 1104(g) of the LIFE Act states:

Inapplicability for Removal Order Reinstatement. Section 241(a)(5) of the Immigration and Nationality Act shall not apply with respect to an alien who is applying for adjustment of status under this section.

Based on the above the AAO finds that the applicant is not inadmissible under section 41(a)(5) of the Act, he is eligible to file waivers of grounds of excludability due to his inadmissibility under sections 212(a)(9)(A)(i) and 212(a)(6)(C)(ii) of the Act. In view of the foregoing, the Director's decision will be withdrawn and the record will be remanded to him in order to consolidate all pertinent files and adjudicate the waiver applications under the provisions of the LIFE Act.

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