

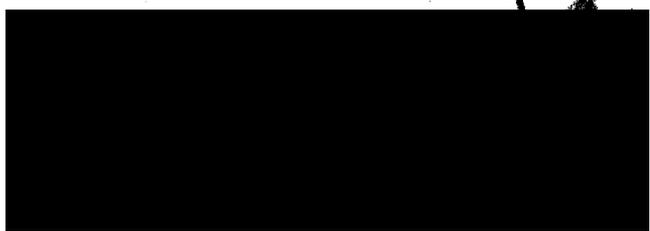
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship and Immigration Services



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JUL 23 2004

FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date:

IN RE: Applicant: [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:



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

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 The director's decision will be withdrawn, the appeal will be dismissed and the application declared moot.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on April 4, 1954. On May 12, 1954, the applicant was found deportable and on May 20, 1954, the applicant was deported to Mexico. The applicant reentered the United States illegally on or about November 2, 1955, and was granted voluntary departure. On April 15, 1958, the applicant reentered the United States and on June 4, 1958, he was granted voluntary departure in lieu of deportation until July 3, 1958. The record further reveals that the applicant reentered the United States on or about April 27, 1963, and again was granted voluntary departure. The applicant departed the United States on an unknown date and reentered illegally on March 7, 1965. On March 22, 1965, the applicant was granted voluntary departure and on March 23, 1965, he departed the United States. The record further reveals that the applicant was inspected and admitted into the United States as a nonimmigrant visitor for pleasure on April 8, 2000, and March 29, 2002. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen son. The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 reside with his spouse and children.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated August 25, 2003.

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

(A) Certain alien 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 five 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) 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal counsel asserts that the Director erred in determining that the applicant is inadmissible under section 212(a)(9)(A) of the Act since he was ordered deported nearly fifty years ago and he resided in Mexico during the 1980s and 1990s. Counsel submits evidence to show that the applicant was employed and retired in Mexico.

In his decision the Director notes that the applicant entered the United States without inspection on March 3, 1965, and that it does not appear that he left the United States since that date. A review of the documentation in the record of proceeding reveals that the applicant departed the United States on March 23, 1965. The evidence presented further shows that the applicant retired in Mexico with disability benefits on December 6, 1989, after more than 20 years of employment.

Based on the evidence submitted on appeal and that contained in the record of proceedings, the AAO finds that the director erred in finding that section 212(a)(9)(A) of the Act applies in this case. The record of proceeding confirms that the applicant departed the United States on March 23, 1965, and remained in Mexico for at least 20 years. Accordingly, the application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act is moot as the applicant is not inadmissible pursuant to section 212(a)(9)(A) of the Act.

ORDER: The director's decision is withdrawn, as it has not been established that the applicant is inadmissible under section 212(a)(9)(A) of the Act. The appeal is dismissed.