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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

JUN 3 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER, VT 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:

[redacted]

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, Vermont 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 attempted to procure admission into the United States on April 17, 2000, by fraud and willful misrepresentation of a material fact. The applicant presented an alien registration card that did not belong to him. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. On April 17, 2000, the applicant was removed from the United States pursuant to section 235(b)(1) of the Act. The record further reflects that the applicant 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). The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of 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 remain in the United States and reside with his U.S. citizen spouse and stepchildren.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's decision* dated April 28, 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.

. . . .

(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 counsel submits a brief and affidavits from the applicant and his spouse. In his brief counsel asserts that the Immigration and Naturalization Service (now known as Citizenship and Immigration Services (CIS)) failed to consider all the favorable factors, which far outweigh the single negative factor of fraud. Additionally in the brief and in the affidavits submitted it is stated that if the applicant if not permitted to reside in the United States his U.S. citizen spouse and stepchildren would suffer extreme hardship.

Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied.

If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel submits a brief in which he states that the applicant's spouse and stepchildren would suffer extreme hardship if the waiver application were denied. In an affidavit submitted by the applicant's spouse (Ms. Smith) she states that she and her children would suffer extreme hardship if the applicant were not permitted to reside in the United States at this time. Furthermore she states that she would suffer severe emotional distress because she married the applicant for love. If the applicant is removed to Mexico his U.S. spouse and stepchildren would suffer hardship, but there is no indication that this will impact them at a level commensurate with extreme hardship. Ms. Smith further states that she depends upon the applicant financially. No evidence has been provided to substantiate that the applicant's financial contribution is critical to Ms. Smith's and her children's lifestyle or well-being. If Ms. Smith and her children were to accompany the applicant to Mexico, it would be expected that some economic, linguistic and cultural difficulties will arise. No evidence exists that Ms. Smith and her children would not be able to adjust to life in Mexico if they were to relocate with the applicant.

The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure admission into the United States by fraud and willful misrepresentation of a material fact. In addition the AAO finds 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 record of proceeding reflects that the applicant was removed to Mexico on April 17, 2000, reentered illegally after his removal and married a U.S. citizen on July 24, 2001. He has never been granted permission to reapply for admission, therefore he is subject to the provision of section 241(a) (5) of the Act, and he is not eligible for any relief under this Act.

Section 241(a) 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.

Notwithstanding the arguments on appeal, 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.