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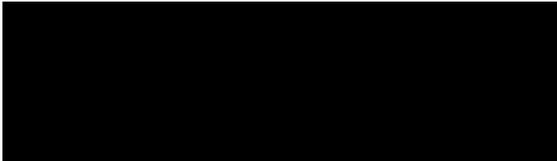


U.S. Citizenship
and Immigration
Services

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MAR 26 2004

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

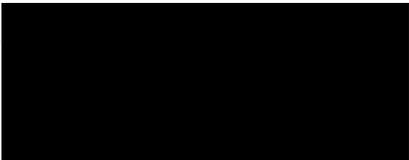
IN RE:

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 application for permission to reapply for admission 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 citizen of Mexico who attempted to procure admission into the United States on June 29, 1997 at the San Ysidro, California port of entry by fraud and willful misrepresentation of a material fact. The record clearly reflects that the applicant knowingly attempted to use a Mexican passport that did not belong to him in order to gain admission into the United States. He was found to be inadmissible to the United States 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). On June 29, 1997 the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. The record reflects that the applicant reentered the United States after his removal on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of § 276 of Act, 8 U.S.C. § 1326 (a felony). The applicant married a naturalized U.S. citizen on December 27, 2000 and is the beneficiary of an approved Petition for Alien Relative. He is inadmissible under section 212(a)(9)(A)(ii) 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 spouse and child.

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 Decision* dated July 22, 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 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 states that the applicant is a person of good moral character, he is married to a U.S. citizen and the father of a U.S. citizen child. Counsel states that the applicant's spouse will suffer extreme hardship if the Application for Permission to Reapply for Admission into the United States after Deportation or Removal is denied. Furthermore counsel states that the applicant's only illegal act is the use of his brother's passport in an attempt to gain entry into the United States and that other individuals have used worse methods to enter the United States and therefore his application should be approved.

To recapitulate, the record clearly reflects that the applicant was removed to Mexico on June 29, 1997 after attempting to gain entry into the United States by fraud and willful misrepresentation of a material fact and reentered on an unknown date after his removal. He has never been granted permission to reapply for admission and therefore he is subject to the provision of section 241(a)(5) of the Act.

Section 241(a) detention, release, and removal of 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.