

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

H4

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[Redacted]

NOV 24 2004

FILE:

[Redacted]

Office: CALIFORNIA 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:

[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, 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 August 22, 1997, by fraud and willful misrepresentation of a material fact. The applicant presented a valid Mexican passport containing a counterfeit I-551 adit stamp. 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 August 24, 1997, 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 December 14, 1999, without a lawful admission or parole and 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 Lawful Permanent Resident (LPR) spouse and U.S. citizen 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 and may not apply for any relief. The Director then denied the application accordingly. *See Director's Decision* dated December 19, 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 states that the applicant was deported in January 1992. A thorough review of the record of proceeding and a search of the electronic database of Citizenship and Immigration Services (CIS) does not reveal that the applicant was deported in January 1992. In addition counsel asserts that CIS erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act and that he is not inadmissible under that section of the Act. Counsel states that the applicant believed that he was in possession of a valid adit stamp and therefore he did not attempt to enter the United States by fraud or willful misrepresentation a material fact. Counsel further states that the applicant was not informed that he was charged with section 212(a)(6)(C)(i) of the Act nor that he was deported from the United States.

The AAO finds counsel's assertions unpersuasive since on August 22, 1997, after the applicant presented the counterfeit adit stamp to the primary inspector, he admitted under oath to the fact that the temporary I-551 stamp contained in his passport was counterfeit. On the same day his spouse admitted that she had purchased the counterfeit stamp on behalf of the applicant for \$200 from a street vendor in Tijuana, Mexico. The record of proceeding clearly shows that the applicant was given a Notice and Order of Expedited Removal (Form I-860) that states that he was inadmissible under section 212(a)(6)(C)(i) of the Act.

In *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; A.G. 1961), the Attorney General established that a misrepresentation is considered to be material if the respondent is excludable on the true facts; and the misrepresentation tends to shut off a line of inquiry relevant to the visa, document, or other benefit procured or sought to be procured that might have resulted in the alien's exclusion.

Based on the above facts 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 his brief counsel states that the Director failed to consider all the positive factors that far outweigh the negative factor in the instant case.

Before the AAO can weigh the favorable and unfavorable factors in this case it must first determine if the applicant is eligible to apply for any relief under the Act.

The record of proceeding reveals that the applicant was removed from the United States on August 24, 1997, and reentered illegally on December 14, 1999. He has never been granted permission to reapply for admission. 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.

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.