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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

HY

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 15 2004

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 application for permission to reapply for admission after 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 on November 13, 1998, at the San Ysidro 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 November 13, 1998, 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 (a felony). 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 parents.

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 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 4, 2003.

On appeal, counsel submits a brief in which he states that the applicant did not make a false claim to U.S. citizenship because his father was born in the United States and the applicant believed that he was a U.S. citizen. Counsel submits a birth certificate showing that the applicant's father was born in the United States but no additional evidence to prove that the applicant is a U.S. Citizen. The mere fact that the applicant's father was born in the United States does not automatically accord the applicant U.S. citizenship.

The AAO finds counsel's statement that the applicant believed he was a U.S. citizen unpersuasive. The record reflects that the applicant represented himself to be a citizen of the United States in order to gain admission into the United States at the San Ysidro Port of Entry on November 12, 1998. In a sworn statement taken on November 13, 1998, after he represented himself to be a U.S. citizen, the applicant stated that he was a citizen of Mexico, his father was a Mexican citizen, he knew that he was attempting to cross illegally into the United States and that he tried to pass himself off as a U.S. citizen. There is no indication he believed he was a U.S. citizen. The applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

The record of proceedings clearly reflects that the applicant was removed from the United States on November 13, 1998, and reentered illegally after his removal. 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.

Additionally, the applicant was removed from the United States because he was found inadmissible under section 212(a)(6)(C)(ii) of the Act that provides in pertinent part, that:

(ii) FALSELY CLAIMING CITIZENSHIP-

(I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

There is no waiver available under this section of the Act.

In *Matter of Martinez-Torres*, 10 I&N Dec. 776 (BIA 1964), the BIA held that in the case of an applicant who is mandatorily inadmissible to the U.S. "no purpose would be served in granting [the] application for permission to reapply for admission into the United States." The BIA held further that the district director's action in denying an I-212 application as a matter of administrative discretion was proper.

Notwithstanding the arguments on appeal, the applicant is subject to the provisions of sections 212(a)(6)(C)(ii) and 241(a)(5) of the Act, which are very specific and applicable. The applicant is not eligible for any relief under the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.