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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 2 2

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 January 31, 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, on January 31, 1998, 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 February 2, 1998, 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. The Director then denied the application accordingly. *See Director's Decision* dated December 4, 2003.

On appeal, counsel states that the applicant's due process rights were violated. Counsel submits a brief and documentation to show the applicant's long residency in the United States, his family ties and his good moral character. In his brief counsel argues the applicant's good moral character, recency of deportation, need of applicant's services in the United States, knowledge of deportation and length of time the applicant has been in the United States should be considered in adjudicating the application.

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.

The record of proceedings clearly reflects that the applicant was removed from the United States on January 31, 1998, and reentered illegally on February 2, 1998. 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 for a violation of this section of the 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.

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; therefore, 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.