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U.S. Citizenship
and Immigration
Services

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H14



FILE:



Office: CALIFORNIA SERVICE CENTER, CA

Date: **APR 14 2005**

IN RE:

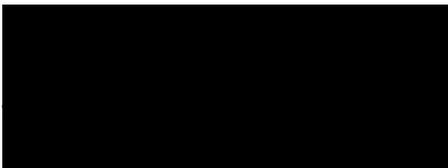
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 July 25, 1991, at the Santa Barbara County Municipal Court, State of California was convicted of the offense of sale of a controlled substance (cocaine) in violation of California Health and Safety Code section 11352(a). On July 14, 1998, he was removed from the United States for having been convicted of an aggravated felony at any time after admission. The record reflects that the applicant reentered the United States after his removal on October 23, 2000, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). A Notice of Intent to Reinstate a Prior Order pursuant to section 241(a)(5) of the Act was issued on or about March 5, 2002. The applicant remains under indictment of federal criminal proceedings regarding a violation of 8 U.S.C. 1326, and Citizenship and Immigration Services (CIS) cannot execute the reinstatement order while federal criminal proceedings remain pending against him. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen spouse. He is inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(II) and 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) and 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 children.

The Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(2)(A)(i)(II) of the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *Director's Decision* dated November 19, 2003.

On appeal, filed on December 17, 2003, counsel requests four months to submit a brief because he has filed a petition for Writ of Habeas Corpus with the 9th Circuit Court of Appeals regarding the applicant's conviction. As of this date, over a year later, no additional documentation has been provided to the AAO.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The applicant has failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Accordingly, the appeal will be summarily dismissed.

ORDER: The appeal is dismissed.