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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 14 2005

IN RE:

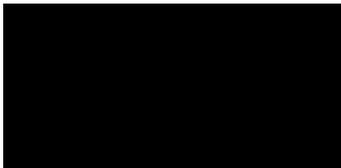
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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 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 a citizen of Colombia who entered the United States on October 16, 1992, as a non-immigrant visitor for pleasure. The applicant applied for asylum on March 11, 1994 with the Immigration and Naturalization Service (now Citizenship and Immigration Services or CIS). On April 25, 1994, the applicant was interviewed for asylum status. The application was denied and on June 26, 1996 an immigration judge granted the applicant voluntary departure until December 26, 1996. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to December 26, 1996 changed the voluntary departure order to an order of deportation. On October 29, 2003, the District Director, San Diego, California issued a Warrant of Deportation (Form I-205) and on October 30, 2003 he was removed from the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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).

The Director determined that the applicant did not file the application for permission to reapply in conjunction with an application for adjustment of status as required by 8 C.F.R. 212.2(e), and denied the application accordingly. *See Director's Decision* dated August 21, 2003.

The regulation at 8 C.F.R. § 212.2(e) states:

Applicant for adjustment of status. An applicant for adjustment of status under section 245 of the Act and Part 245 of this chapter must request permission to reapply for entry in conjunction with his or her application for adjustment of status. This request is made by filing an application for permission to reapply, Form I-212, with the district director having jurisdiction over the place where the alien resides. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director must refer the Form I-212 to the immigration judge for adjudication.

On appeal the applicant states that he has been living in the United States for almost 11 years and he does not want to return to Colombia due to the political and economic situation there. In addition the applicant states that his attorney misrepresented him because he asked if he could apply for section 245 of the Act and he was told that he was not eligible.¹

In the instant case the Form I-212 was not filed in conjunction with an Application for Permanent Resident Status or Creation of a Record of Lawful Permanent Residence (Form I-485) and therefore the Form I-212 cannot be adjudicated.

The record of proceedings reflects that the applicant's lawful permanent resident father died on March 19, 2002, and therefore a Form I-130 filed on the applicant's behalf was automatically revoked. A request for reinstatement of the Form I-130 pursuant to 8 C.F.R. 205.1(a)(3)(i)(C) was submitted and is pending with CIS.

¹ The AAO notes that the appeal was filed prior to the applicant's removal.

Since the applicant is presently in Colombia this decision is without prejudice to the filing of a new Form I-212 with the District Director having jurisdiction over the place where the deportation proceedings were held pursuant to 8 C.F.R. § 212.2(g)(1)(i) which states in pertinent part:

(g) Other applicants.

(1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I-212. This form is filed with either:

(i) The district director having jurisdiction over the place where the deportation or removal proceedings were held. . . .

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.