



U.S. Citizenship  
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FILE:

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Office: CALIFORNIA SERVICE CENTER

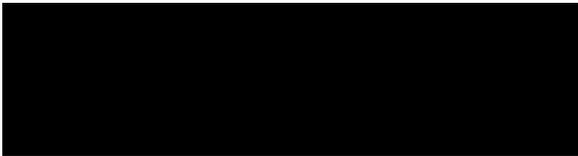
Date: AUG 16 2005

IN RE:



APPLICATION: Application for Permission to Reapply for Admission Into the United States After Deportation or Removal under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

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 application 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 record indicates that the applicant is a native of Mexico and first entered the United States without inspection on September 27, 1983. On October 7, 1983, the applicant was ordered deported and was removed from the United States. The applicant reentered the United States without inspection on June 2, 1989. The applicant was ordered deported and was removed from the United States on June 19, 1989. The applicant reentered the United States without inspection on June 19, 1996. On June 28, 1996, the applicant was ordered deported and was removed from the United States. The applicant filed an I-212 Application for Permission to Reapply for Admission Into the United States After Deportation or Removal on April 2, 2003. The applicant reentered the United States without inspection at Roma, Texas on November 7, 2003. On August 9, 2005, United States Immigration and Customs Enforcement (ICE) reinstated the applicant's prior deportation order under section 241(a)(5) of the Immigration and Nationality Act (the Act) and removed the applicant from the United States. The applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act because, after having been removed from the United States, he re-entered the United States without being admitted. He now seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act in order to travel to the United States and reside with his daughter.

The director concluded that the applicant was not eligible to apply for any relief under the Act and denied the applicant's I-212 accordingly. *Decision of the Director*, California Service Center, March 17, 2005.

On appeal, counsel contends that the applicant's I-212 should be granted because the applicant has lived in Mexico for the past nine years, waiting patiently for his visa so that he can be reunited with his daughter and grandchildren in the United States. In support of the appeal, counsel submitted a brief.

Section 212(a)(9)(C) of the Act provides

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.-Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

The applicant is inadmissible under section 212(a)(9)(C)(i)(II), but section 212(a)(9)(C)(ii) provides a basis for permitting the re-admission of an alien who is inadmissible under section 212(a)(9)(C)(i)(II). ICE,

however, has reinstated the prior removal order against the applicant under section 241(a)(5) of the Act, which provides:

(a) Detention, Release, and Removal of 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 the reentry.

Because the prior removal order was reinstated, the applicant is not eligible for any form of relief under section 241(a)(5) the Act. Accordingly, the applicant's I-212 filed on April 2, 2003 must be denied.

Even assuming that section 241(a)(5) did not foreclose the approval of the application, an alien is not eligible to apply under section 212(a)(9)(C)(ii) unless the alien seeks to return "more than 10 years after the date of the alien's last departure." The record indicates that the applicant last left the United States on August 9, 2005. The earliest date on which he could apply under section 212(a)(9)(C)(ii) (assuming no later departures) is August 10, 2015.

Approval of an I-212, moreover, is a matter entrusted to USCIS discretion. The AAO acknowledges that the applicant has equities in the United States. He has a daughter and grandchildren in the United States. These equities must be weighed, however, against his long history of violating United States immigration laws. The applicant has illegally reentered the United States three times after having been removed for immigration violations. Returning to the United States unlawfully after having been removed is a serious offense that only increases the adverse impact of his long-term unlawful presence. In fact, section 276(a) of the Act would authorize the applicant's criminal prosecution, on a felony charge, for returning to the United States after removal without prior consent. Even if the applicant were eligible to apply for relief under section 212(a)(9)(C)(ii) of the Act, therefore, the denial of his I-212 would be justified as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that he is eligible for any form of relief under the Act. The director's decision is therefore affirmed both on the basis of statutory ineligibility and as a matter of discretion. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.