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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 25 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 citizen of Mexico who on August 5, 1996, was granted Lawful Permanent Resident (LPR) status. On March 7, 2002, in the Superior Court of California, County of Los Angeles, the applicant was convicted of the offense of incest in violation of section 285 of the California Penal Code. On April 4, 2002, the applicant was served with a Notice to Appear (NTA) for a removal hearing before an Immigration Judge. On December 16, 2002, an Immigration Judge ordered the applicant removed from the United States pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony at any time after admission and section 237(a)(2)(E)(i) of the Act 8 U.S.C. § 1227(a)(2)(E)(i), as an alien who at any time after entry has been convicted of a crime of domestic violence. Subsequently, on December 17, 2002, the applicant was removed to Mexico. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of 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) in order reside with his father and siblings.

The Director determined that the applicant is not eligible for any exception or waiver under the Act and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. See *Director's Decision* dated October 13, 2004.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

....

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law . . . [and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.]

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel states that the applicant is in the process of having his criminal conviction expunged from his record and therefore the Form I-212 should be granted.

Even if the applicant's offense were to be expunged, he was convicted of the offense of incest. Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A) no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss,

cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Once an alien is subject to a "conviction" as that term is defined at section 101(a)(48)(A) of the Act, the alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt through a rehabilitative procedure. See *Matter of Roldan-Santoyo*, I&N Dec. 3377 (BIA 1999).

Based on the applicant's conviction he is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. In the instant case the applicant's conviction is an aggravated felony for immigration purposes.

Section 101(a)(43) of the Act defines the term "aggravated felony":

(A) murder, rape, or sexual abuse of a minor.

Section 212(h) of the Act provides, in pertinent part, that:

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

As noted above the applicant was granted LPR status on August 5, 1996. Since the applicant was previously admitted for lawful permanent residence and he has been convicted of an aggravated felony, no waiver is available to him under section 212(h) 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.

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. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.