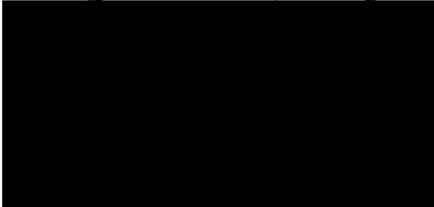


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FILE:



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:

SELF-REPRESENTED

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 The Director's decision will be withdrawn and the matter remanded to him for further consideration and action.

The applicant is a native and citizen of Mexico who on September 5, 1991, was convicted in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, for the offence of corporal injury to a child and was sentenced to 180 days of imprisonment and five years probation. On November 8, 1997, the applicant applied for admission at the [REDACTED] California Port of Entry as a returning lawful permanent resident. The applicant was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. On November 9, 1997, the applicant was served with a Notice to Appear (NTA) for a removal hearing before an Immigration Judge. On December 23, 1997, an Immigration Judge ordered the applicant removed from the United States and on the same date the applicant was removed to Mexico. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He 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 travel to the United States and reside with his U.S. citizen children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. In addition the Director determined that the applicant has been convicted of a violation of a law relating to a controlled substance and that he is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *See Director's Decision* dated October 12, 2004.

On appeal the applicant states that he was been residing in Mexico since the date of his removal and that he has never been convicted of a crime related to a controlled substance. The applicant submits documentation to show that he has been residing in Mexico since December 23, 1997. The applicant further states that he needs to enter the United States so his children would have an opportunity for a better education and to visit his ill father. In addition the applicant attempts to explain the circumstances regarding his conviction of corporal injury to a child and states that he never meant to hurt his child.

Before the AAO can make a decision on the appeal, it must be established whether the applicant was convicted of a crime related to a controlled substance. A review of the record of proceedings does not contain any criminal record or court decree regarding a conviction of a violation of any law or regulation relating to a controlled substance. The applicant denies this charge. The only reference to the applicant's possible conviction of a controlled substance violation is a printout from the electronic database of Citizenship and Immigration Services (CIS). It is unclear to the AAO whether this information pertains to this applicant. Absent supporting documentation, the AAO is unable to confirm the Director's conclusion that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act.

The CIS Operation Instructions in 103.3(C) provide, in part, that the record of proceeding must contain all evidence used in making the decision. Without the complete record of proceeding and documentary evidence that the applicant was convicted of a violation of a law relating to a controlled substance the AAO cannot make a decision on the appeal.

In view of the foregoing, the application will be remanded to the Director for further action. The Director shall confirm that the applicant was convicted of a drug related crime. If it is confirmed, the complete record of proceeding and documentation regarding the conviction shall be forwarded to the AAO for review. If it is determined that the applicant was not convicted of this crime, the Director shall issue a new decision, which, if adverse to the applicant, shall be certified to the AAO for review.

**ORDER:** The Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.