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Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [Redacted]

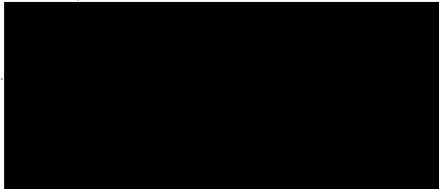
Office: CALIFORNIA SERVICE CENTER

Date: FEB 03 2005

IN RE: Applicant: [Redacted]

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 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 citizen of Mexico who has been removed from the United States on three different occasions. The applicant was first deported from the United States on August 3, 1978, pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act). On December 8, 1994, he was deported for a second time pursuant to section 241(a)(1)(B) of the Act and finally, after he reentered without a lawful admission or parole in April 1995, he was removed on January 9, 2001, pursuant to section 241(a)(5) of the Act. The record reflects that the applicant reentered the United States on an unknown date but before February 26, 2001, the date a California driver's license was issued to the applicant, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He is inadmissible under section 212(a)(9)(A)(ii) of the Act, 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 section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated May 28, 2004.

On appeal, counsel states that the applicant disagrees with the determination made by the Director, and submits a brief and additional evidence to support his assertion that the decision was in error. In his brief counsel states that the Director's reasoning in the denial is unclear. In addition, counsel states that the applicant's spouse and children would suffer hardship if the applicant were not permitted to reside in the United States. Counsel states that the applicant's mother-in-law suffers from severe osteoporosis and is confined in a wheelchair, and that the applicant provides financial and emotional support to his elderly in-laws. Furthermore counsel states that the applicant's services are needed in the United States due to his employment, and that he is a person of good moral character. Counsel also states that the applicant accepts full responsibility for his errors, that over the past 17 years he has committed himself to an alcohol free lifestyle, has helped others, is a respected members of the community, a valuable employee and a dedicated family man. Counsel states that the applicant has shown that the favorable factors in his case outweigh any adverse consideration and his application should be approved. In his brief counsel asserts that the applicant should not be disqualified because he reentered the United States without inspection, because if that were the case, the instructions on Form I-212 would not permit aliens in the United States to submit a Form I-212 for adjudication to the Service office that has jurisdiction over their place of residence.

Counsel's assertions are not persuasive. In his decision the Director clearly states that the applicant is inadmissible to the United States and no waiver is available to him as a result of his reentry without permission or inspection. In addition, the instructions on Form I-212 indicate where an applicant can file Form I-212 but do not address whether an applicant is inadmissible under another section of the Act, or is eligible for relief under any other section of the Act.

Before the AAO can weigh the favorable versus and unfavorable factors in this case it must first determine if the applicant is eligible to apply for any relief under the Act.

The record of proceeding clearly reflects that the applicant was removed to Mexico on three different occasions and reentered illegally after his last removal of January 9, 2001. He has never been granted permission to reapply for admission; therefore he is subject to the provisions of section 241(a) (5) of the Act, 8 U.S.C. § 1231(a)(5) which states:

Section 241(a) detention, release, and removal or 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.

Notwithstanding the arguments on appeal, section 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provisions of section 241(a)(5) of the Act, and he is not eligible for any relief under this 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, and no purpose would be served in granting the application.

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.