

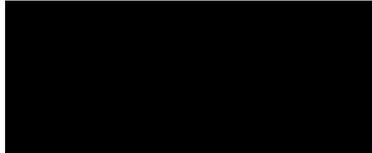
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAR 07 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application 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 The Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on March 1, 1991. The applicant applied for asylum with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)) on July 19, 1996. He failed to appear for a scheduled interview regarding his asylum application. On February 23, 1998, the applicant failed to appear for a removal hearing and he was subsequently ordered deported in absentia by an Immigration Judge pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i) for having been present in the United States without being admitted or paroled. The applicant failed to surrender for removal or depart from the United States and is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 remain in the United States and reside with his U.S. citizen spouse and child.

The Director determined that the applicant was inadmissible under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for a period of one year or more. He further determined that the applicant was not eligible for any exceptions or waivers under this section of the Act and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212). *See Director's Decision* dated September 27, 2004.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

.....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that the applicant entered the United States on or about March 1, 1991, was order deported in absentia by an Immigration Judge, failed to surrender for removal or depart from the United States and remained in the United States without a lawful admission or parole. There is no evidence in the record that the applicant has left the United States since his original entry in 1991. He is not inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act until he actually departs the United States. If the applicant departs the United States and is found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, he is eligible to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) based on his marriage to a U.S. citizen.

Based on the above facts the AAO finds that the Director erred in denying the I-212 application based on the fact that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant remains inadmissible under section 212(a)(9)(A)(ii) of the Act.

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

(A) Certain alien 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, or
- (II) departed the United States while an order of removal was outstanding, and 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

The proceeding in the present case is for the application for permission to reapply for admission into the United States after deportation or removal. The Director did not properly adjudicate the Form I-212 pursuant to section 212(a)(9)(A)(iii) of the Act. In view of the foregoing, the Director's decision will be withdrawn and the record will be remanded to him in order to properly adjudicate the Form I-212 under section 212(a)(9)(A)(iii) of the Act. If the new decision is adverse to the applicant, the record 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.