

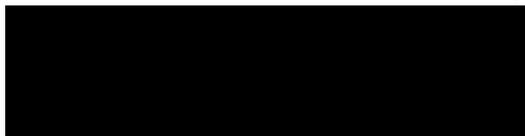
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U.S. Department of Homeland Security  
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**U.S. Citizenship  
and Immigration  
Services**

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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **MAR 18 2005**  
(plates)

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 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 a citizen of El Salvador who entered the United States without a lawful admission or parole on May 3, 1991, and on August 31, 1994, he applied for asylum. On December 6, 1994, the applicant was interviewed for asylum status by the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)) and was referred to an Immigration Judge for a court hearing. The record further reflects that on April 15, 1996, the Immigration Judge granted the applicant voluntary departure until December 15, 1996, in lieu of deportation. The applicant filed a motion to reopen which an Immigration Judge denied on January 9, 1997. An appeal to the Board of Immigration Appeals (BIA) was dismissed on January 16, 1998. The applicant's failure to depart on or prior to December 15, 1996, changed the voluntary departure order to an order of deportation. The record of proceedings reveals that the applicant was removed from the United States on June 1, 1998. In addition the record reveals that the applicant reentered the United States on or about February 5, 2000 without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his Lawful Permanent Resident (LPR) father. The applicant is inadmissible under 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.

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 a waiver 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 October 1, 2004.

The AAO finds that the Director erred in his decision stating that the applicant is inadmissible without exceptions or waivers pursuant to section 212(a)(9)(B) of the Act. If the applicant were found inadmissible under section 212(a)(9)(B) of the Act, he would be eligible to file an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

On appeal the applicant states that he disagrees with the Director's decision because he is presently in the United States in legal status under Temporary Protected Status (TPS) and he continues to have TPS status.

A search of the electronic records of CIS reveals that the applicant applied for and received TPS status on January 2, 2002, under file number [REDACTED]. The CIS' electronic database reveals that the applicant used a different date of birth when he applied for TPS status.

Because the applicant reentered the United States after his June 1, 1998 removal without a lawful admission or parole and without permission to reapply for admission, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C § 1182(a)(9)(C)(i)(I) for having been unlawfully present in the United States after a previous immigration violation.

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

(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 [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The applicant was granted voluntary departure until December 15, 1996, and was removed from the United States on June 1, 1998. The applicant reentered the United States illegally, on or about February 5, 2000, after his removal and was granted TPS status on January 2, 2002. He was unlawfully present in the United States for an aggregate period of more than one year and therefore he is subject to sections 212(a)(9)(C)(i)(I) and (II) of the Act. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. The applicant is not eligible to apply for any relief under this Act until 10 years after the date of his last departure from the United States and the Secretary has consented to the alien's reapplying for admission. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.