

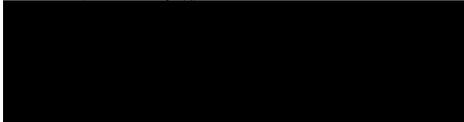
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**U.S. Citizenship
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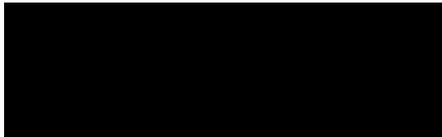


FILE:  Office: NEWARK, NEW JERSEY Date: MAY 27 2005

IN RE: Applicant: 

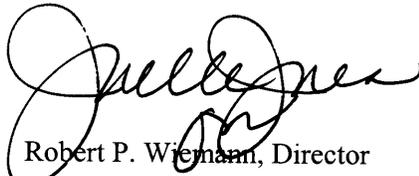
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 after removal was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia who entered the United States without a lawful admission or parole in 1980 or 1981. The applicant departed the United States on an unknown date and on September 20, 1999, the applicant was apprehended by officers of the United States Border Patrol. The applicant was charged with 8 U.S.C. § 1325, for attempting illegal entry into the United States and 18 U.S.C. § 1544 for attempted use and possession of an Alien Registration Card (ARC) that did not belong to him. Consequently on September 20, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1). The applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. The record reflects that the applicant reentered the United States on an unknown date after his removal without a lawful admission or parole and without permission to reapply for admission in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). 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 remain in the United States and reside with his U.S. citizen spouse and children.

The District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *District Director's Decision* dated June 29, 2004.

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

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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 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.

On appeal, counsel asserts that the District Director failed to correctly weigh the favorable and unfavorable factors in the case. In addition counsel states that the District Director failed to take into consideration the applicant's many years of residence in the United States and his marriage to a U.S. citizen. Furthermore counsel states that the applicant's entry and residence in the United States without permission cannot be viewed as unfavorable factors because he is married to a U.S. citizen. Counsel further states that the applicant's attempt to enter the United States using an ARC as an imposter is the subject of a Form I-601

waiver application which is still pending with the Service and the filing of Form I-212 from within the United States cannot be viewed as a negative factor. Counsel submits a psychological report in an attempt to show that the applicant's spouse and children would suffer extreme hardship if the application is not granted and the applicant is forced to depart the country.

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

As noted above the applicant was expeditiously removed from the United States on September 20, 1999. By his own admission he reentered the United States after his removal without a lawful admission or parole and without permission to reapply for admission. Therefore the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

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 does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. He is not eligible to apply for any relief under this Act for 10 years following the date of his last departure from the United States and then only if the Secretary consents to his reapplying for admission.

In addition the AAO finds that since the applicant has never been granted permission to reapply for admission he is subject to the provisions of section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) which states:

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 [chapter], and the alien shall be removed under the prior order at any time after reentry.

Notwithstanding the arguments on appeal, sections 212(a)(9)(C)(i) and 241(a)(5) of the Act are very specific and applicable. The applicant is not eligible for any relief under the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.