



U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 07 2005

IN RE:

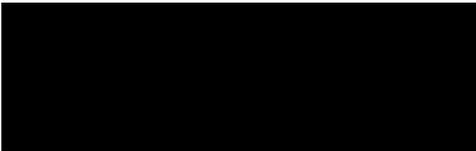
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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 into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a native and citizen of El Salvador who entered the United States without inspection on or about April 20, 1991. The applicant applied for asylum on October 31, 1991, with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). On February 28, 1994, his asylum application was denied and an Order to Show Cause was issued for a hearing before an Immigration Judge. The record reflects that on June 24, 1997, the applicant was removed from the United States pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act). The record further reveals that the applicant reentered the United States on October 10, 1997, 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. On November 19, 2001, the applicant was removed from the United States pursuant to section 241(a)(5) of the Act. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. 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 travel to the United States and reside with his U.S. citizen spouse.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Form I-212 accordingly. See *Director's Decision* dated October 5, 2004.

On June 30, 2005, the applicant's spouse, through counsel, requested that the appeal on behalf of the applicant be withdrawn. Pursuant to the regulation at 8 C.F.R. § 103.3(2)(ix), only the affected party may withdraw the appeal, in writing, before a decision is made. The applicant's spouse is not the affected party in the instant appeal and therefore the AAO cannot accept her request to withdraw the appeal. Only the applicant can withdraw the appeal.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).

The record indicates that the Director issued the decision on October 5, 2004. It is noted that the Director properly gave notice to the applicant that he had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was received by the California Service Center on November 12, 2004, 38 days after the decision was issued. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.