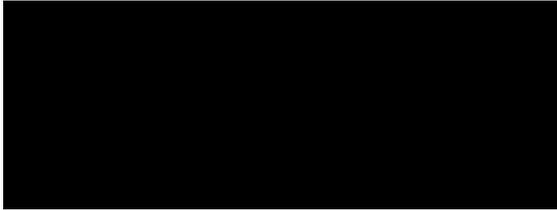


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U.S. Citizenship  
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FILE: [REDACTED] Office: SAN ANTONIO Date: **AUG 15 2006**

IN RE: [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: 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, San Antonio, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who, on August 18, 2003, filed the Form I-212. In his brief, the applicant testified that, in 1999, immigration officers apprehended him at a checkpoint inside the United States. The applicant presented false documentation to the immigration officers in order to remain in the United States to visit his deceased father's grave. The applicant testified that he was removed from the United States. The applicant has since remained outside the United States. The district director found the applicant inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 travel to the United States to visit his deceased father's grave.

The district director determined that he could not adjudicate the application because the documentation filed by the applicant to support the Form I-212 was in Spanish and was not translated. The district director found that pursuant to 8 C.F.R. § 103.2(b)(3), all foreign documents must be accompanied by an English translation and he denied the Form I-212 accordingly. *See District Director's Decision* dated March 16, 2005.

On appeal, the applicant submits English translations with the Spanish documentation and contends that he should be granted permission to reenter the United States so that he can visit his deceased father's gravesite. *See Form I-290B and Brief*, dated April 12, 2005. In support of the appeal, the applicant submitted the above-referenced brief and employment verification. The entire record was reviewed in rendering a decision in this case.

The AAO finds that there is insufficient evidence in the record to determine that the applicant is inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act and he is, therefore, not required to receive permission to reapply for admission at this time.

Section 212(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.
- (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 who 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 on a 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

....

(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 Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary 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 district director based the finding of inadmissibility under sections 212(a)(9)(A) of the Act on the applicant's admission to removal in 1999. Besides the applicant's statement on the Form I-212, there is no evidence in the record or in Citizenship and Immigration Services' (CIS) electronic records that the applicant has ever been removed from the United States. The AAO notes that the information available is based solely on the name and date of birth given by the applicant on the Form I-212. As such, without confirmation through a fingerprint-based Federal Bureau of Investigations (FBI) inquiry or documentation provided by the applicant to confirm that the applicant was indeed removed from the United States, there is currently no evidence that the applicant has ever been removed from the United States. As such, the AAO finds that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(9)(A) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant has ever been removed from the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the district director will be withdrawn and the permission to reapply for admission application will be declared moot. However, the AAO notes that the applicant will need to file an application for permission to reapply for admission if it is later discovered that there is evidence that he has been removed from the United States.

The AAO also notes that the applicant may be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who attempted to procure immigration benefits, i.e., remain in the United States, by willful misrepresentation of a material fact or by fraud. As such, the applicant may need to file an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) to apply for a waiver of the 212(a)(6)(C)(i) inadmissibility grounds pursuant to section 212(d)(3) of the Act, 8 U.S.C. § 1182(d)(3).

**ORDER:** The appeal is dismissed, the prior decision of the district director is withdrawn and the application for permission to reapply for admission is declared moot.