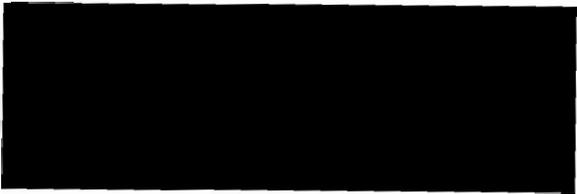




U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: AUG 29 2006

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, Chief
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 Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The Acting Director's decision will be withdrawn, the appeal will be dismissed and the application declared unnecessary.

The applicant is a native and a citizen of Mexico who entered the United States without a lawful admission or parole on or about July 15, 2000. On January 20, 2004, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and a Notice to Appear (NTA) for a removal hearing before an immigration judge was served on him. Consequently, the applicant was released on a \$5,000 bond. On February 12, 2004, an immigration judge found the applicant removable 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, and granted him voluntary departure until February 23, 2004, in lieu of removal. The record of proceedings reveals that the applicant departed the United States on February 19, 2004. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. 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 and reside with his U.S. citizen spouse and children.

The Acting Director determined that since the applicant departed the United States prior to the expiration of his voluntary departure order and he continues to reside outside the United States a Form I-212 is not necessary. The Acting Director then denied the Form I-212. *See Acting Director's Decision* dated July 18, 2005.

On appeal, the applicant states that he has been married since October 2003 and wishes to return to the United States in order to work, provide for his family and be here for the birth of his second child. In addition, the applicant submits a letter from his spouse in which she writes about complications of her pregnancy and her need for the applicant's presence in the United States

Before the AAO can weigh the discretionary factors in this case, it must first determine whether a Form I-212 is necessary. As noted above, the Acting Director determined that a Form I-212 is not necessary in this case, but instead of rejecting the application she denied it.

To recapitulate, an immigration judge granted the applicant voluntary departure until February 23, 2004. The applicant departed the United States on February 19, 2004, prior to the expiration of the voluntary departure order and, therefore, he not inadmissible pursuant to section 212(a)(9)(A) of the Act.

Accordingly, the Acting Director's decision will be withdrawn, the appeal will be dismissed and the Form I-212 will be declared unnecessary as it has been established that the applicant is not inadmissible under section 212(a)(9)(A) of the Act.

It is noted that the applicant may need to apply for a waiver of inadmissibility as a result of his unlawful presence in the United States prior to his departure. This determination will be made when he applies for a visa at a U.S. Consulate in Mexico.

ORDER: The Acting Director's decision is withdrawn, the appeal is dismissed and the application declared unnecessary.