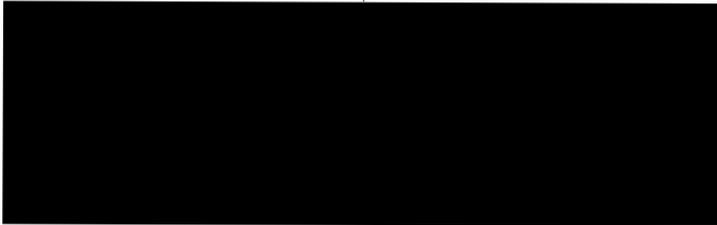




U.S. Citizenship  
and Immigration  
Services

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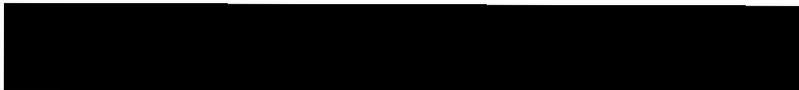
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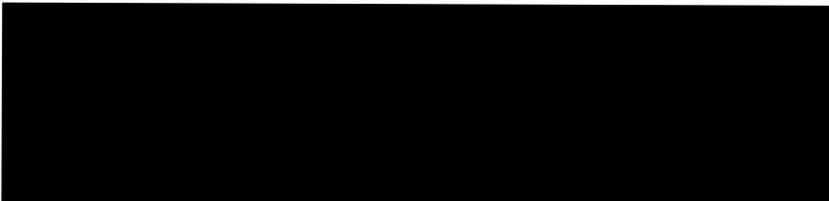
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 09 2006

IN RE:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, 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 applicant is a native and citizen of Mexico who, on February 21, 1998, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented an I-551 Resident Alien Card belonging to another. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. The applicant gave a false name and date of birth. Consequently, on February 22, 1998, the applicant was expeditiously removed from the United States, under the name ' [REDACTED] ', pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On July 9, 1998, the applicant was apprehended at a residence in Santa Ana, California. The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to July 9, 1998, the date on which he was apprehended. The applicant agreed to appear as a material witness in prosecuting the smuggler that had brought him to the United States in exchange for the government's agreement not to press criminal charges for his illegal entry into the United States. On May 19, 1999, the applicant married his U.S. citizen spouse. On June 17, 1999, the applicant filed an I-485 Application to Register Permanent Resident or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On July 25, 2002, the applicant appeared at a Citizenship and Immigration Services (CIS) office for a scheduled interview regarding the Form I-485 and Form I-130. On July 25, 2002, the Form I-130 was approved. On June 13, 2003, the district director denied the Form I-485 because the applicant was subject to reinstatement of a prior removal order and was inadmissible pursuant to sections 212(a)(6)(C) and 212(a)(9) of the Act, 8 U.S.C. §§ 1182 (a)(6)(C) and 212(a)(9). On January 21, 2004, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and the applicant was removed to Mexico on January 22, 2004. The applicant now remains in Mexico. On April 28, 2004, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). 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 re-enter the United States and reside with his U.S. citizen spouse and two U.S. citizen children.

The Director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), for being an alien who seeks permission to reapply for admission to the United States after having been deported or removed from the United States. The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. *See Director's Decision*, dated March 2, 2005.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act. These proceedings are limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9) of the Act to be waived.

On appeal, counsel states that the facts in this case establish that the applicant warrants a favorable exercise of discretion. *See Applicant's Brief*, dated April 29, 2005. The AAO notes counsel states the applicant is only

subject to a five-year bar. *See Applicant's Brief*, dated February 16, 2006. However, as discussed below, the applicant is subject to a 20-year bar pursuant to section 212(a)(9)(A)(i) of the Act.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. As noted previously, the applicant was expeditiously removed from the United States on February 22, 1998. The applicant reentered the United States, within five years of his removal, without a lawful admission or parole and without permission to reapply for admission. The applicant was removed under the reinstatement of an order of removal on January 22, 2004.

The AAO finds that the applicant is inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C)(i) of the Act and, therefore, must receive permission to reapply for admission.

Section 212(a)(9) 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 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.

Therefore, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, as an alien who reentered the United States without being admitted after having been removed from the United States. The AAO notes that an exception to this ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the ACT. *See also* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on January 22, 2004, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission. The applicant is eligible to re-file the Form I-212 after January 22, 2014, at which time the applicant will also need to file an Application for Waiver of Grounds of Excludability (Form I-601) for waiver of the 212(a)(6)(C)(i) inadmissibility grounds pursuant to section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.