

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

tlc

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: DENVER, COLORADO

Date: NOV 06 2006

IN RE:

Applicant:

[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:

[REDACTED]

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 District Director, Denver, Colorado, and 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 entered the United States without a lawful admission or parole on February 8, 1981. The Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was issued on February 1, 1983. On February 5, 1983, the applicant was deported from the United States pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for entering the United States without inspection. The record reflects that the applicant reentered the United States in March 1983 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 (a felony). On April 10, 1985, immigration officials encountered the applicant after he was arrested for traffic violations. An OSC for a deportation hearing before an immigration judge was issued on April 11, 1985. On April 30, 1985, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(2) of the Act and section 241(a)(1) of the Act, 8 U.S.C. § 1227(a)(1), for being inadmissible at time of entry. Consequently, on May 9, 1985, the applicant was deported from the United States. The record further reflects that the applicant reentered the United States on or about May 11, 1985, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 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 remain in the United States and reside with his U.S. citizen spouse.

The District Director determined that section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), applies in this matter and the applicant is not eligible for any relief or benefit from his application. The District Director then denied the Form I-212 accordingly. *See District Director's Decision* dated August 15, 2001.

Section 241(a) of the Act states in pertinent part:

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

On appeal, counsel asserts that several Circuit Courts of Appeals have ruled that section 241(a)(5) of the Act was not intended to have retroactive application. In addition, counsel states that the applicant's illegal reentry occurred prior to April 1, 1997, date of enactment of section 241(a)(5) of the Act and, therefore, the new law is not applicable to him. Counsel submits a brief in which she refers to case law from the Ninth and Sixth Circuit Courts of Appeals which held that section 241(a)(5) of the Act does not apply retroactively. Counsel states that since section 241(a)(5) of the Act has an "impermissible reactive effect" on the applicant, the decision denying the application on this basis should be vacated and the application re-adjudicated according to appropriate law.

The record of proceeding clearly reflects that the applicant was deported from the United States on February 5, 1983, and again on May 9, 1985. The record further reflects that he illegally reentered after each of his deportations with his last entry occurring on or about May 11, 1985. The applicant's illegal reentry into the United States occurred prior to the April 1, 1997, enactment date of the IIRIRA, Pub. L. No. 104-208, § 303(b)(3), 110 Stat. 3009.

The issue of whether section 241(a)(5) provisions of the Act apply retroactively to illegal reentries made prior to April 1, 1997, has been the subject of conflicting decisions by the Circuit Courts. However, on June 22, 2006, the Supreme Court of the United States held in *Fernandez-Vargas v. Gonzalez*, 548 U.S. \_\_\_\_ (2006), that section 241(a)(5) of the Act applies to those who entered before IIRIRA and does not retroactively affect any right of, or impose any burden on the individual.

The applicant in this case has failed to establish that he had a reasonable expectation of relief from deportation at the time of his illegal reentry to the United States prior to April 1, 1997. At the time of his April 11, 1985, reentry the applicant had no reasonable expectation that he would be able to collaterally attack his prior deportation order or that he was entitled to the prior procedural inefficiencies in the administration of immigration laws. The applicant, therefore, had no reasonable expectation of adjustment of status relief under pre-IIRIRA laws. Thus, as applied to the applicant, section 241(a)(5) of the Act does not impose any new duties or new liabilities. Therefore, section 241(a)(5) of the Act applies to the applicant retroactively.

The applicant is subject to the provision of section 241(a)(5) of the Act, and he is not eligible for any relief under this Act. No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.