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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

FILE:

Office: CHICAGO, ILLINOIS

Date:

NOV 20 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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Mexico who, on July 17, 1998, at the O'Hare Chicago International Airport applied for admission into the United States. The applicant presented a valid Mexican passport containing a nonimmigrant visa. 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 willfully misrepresenting a material fact, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa. Consequently, on July 18, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 District Director determined that the applicant did not submit an Application for Waiver of Grounds of Inadmissibility (Form I-601) simultaneously with the Form I-212 as required by the regulation at 8 C.F.R. 212.2(d) and denied the Form I-212 accordingly. *See District Director's Decision* dated April 8, 2005.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's spouse and not the applicant himself. Therefore, the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28, but this office will accept the submitted information.

On appeal, counsel submits a brief and states that the applicant should have an opportunity to supplement his application with a Form I-601. Counsel submits a Form I-601 with supporting documentation but without the required fee. In addition, counsel alleges that the District Director's statement that the applicant was "in fact permanently residing in the United States" to be incorrect. Counsel further states that since the District Director did not provide any reasoning regarding his statement he abused his discretion and refers to case law regarding abuse of discretion. In support of the submitted Form I-601 counsel refers to case law regarding extreme hardship, submits numerous affidavits from family members and friends regarding the applicant's good moral character, his relationship with his spouse and the extreme hardship his spouse is experiencing in the United States, and states that the applicant is a person of high moral values and does not have a criminal record. Finally, counsel requests that the District Director's denial be reversed and the Form I-601 be considered.

Counsel assertions regarding the applicant's attempted entry are not persuasive. The record of proceeding reflects that at the time of his application for admission on July 18, 1998, the applicant stated that he was visiting the United States on business. It was determined that he had been living and working in the United States since 1996 and, therefore, the District Director's statement was not an abuse of discretion. Neither the AAO nor the District Director has jurisdiction over the circumstances surrounding the applicant's expedited removal from the United States. The fact remains that the applicant was expeditiously removed from the

United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act. Therefore, the applicant is required to file a Form I-601 to waive his inadmissibility under section 212(a)(6)(C)(i) of the Act.

Before the AAO can determine who has jurisdiction over the Form I-212 and weigh the discretionary factors in this case it must first determine whether the applicant is still inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

Section 212(a)(9)(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.

(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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

To recapitulate, the applicant was expeditiously removed from the United States on July 18, 1998. The record of proceeding does not reflect that the applicant re-entered or attempted to reenter the United States after his removal. The applicant and his spouse state that he resides in Mexico and there is no documentary evidence to show otherwise. It has now been more than five years since the applicant's date of removal. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

The AAO notes that the applicant remains inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. Since the applicant resides in Mexico he must file a Form I-601 along with the appropriate fee with the American Consulate that has jurisdiction over his place of residence.

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