

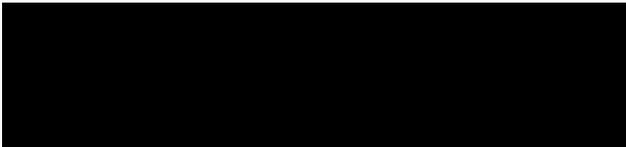
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 13 2006

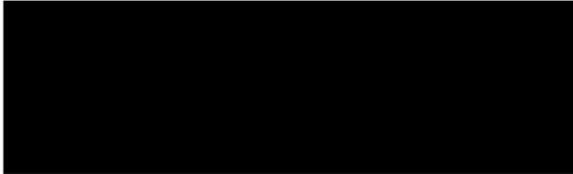
IN RE:

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:



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 Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who entered the United States without a lawful admission or parole on May 11, 1986. On November 29, 1986, Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant. On November 30, 1986, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on the applicant, and on December 2, 1986, the applicant was released on his own recognizance. On July 21, 1987, an immigration judge found the applicant deportable pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for entering the United States without inspection and granted him voluntary departure until January 21, 1988, in lieu of deportation. On January 14, 1988 the District Director extended the voluntary departure order until May 21, 1988. The applicant failed to surrender for removal or depart from the United States on or before May 21, 1988. The applicant's failure to depart the United States on or before May 21, 1988, **changed the voluntary departure order to an order of deportation.** On May 7, 1990, a Warrant of Removal/Deportation (Form I-205) was issued, and a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that he appear at the Los Angeles, California district office in order to be removed from the United States. The Form I-166 was returned because the applicant had moved and had not left a forwarding address. On April 10, 1998, the applicant appeared at a CIS office for a scheduled interview regarding an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant was taken into custody and on the same date he was deported to El Salvador. The record reflects that the applicant reentered the United States on or about August 8, 1998, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his Lawful Permanent Resident (LPR) mother. 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 LPR mother and U.S. citizen child.

The Director determined that the applicant was inadmissible pursuant to section 212(a)(6)(A)(i) of 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 section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having reentered the United States, without being admitted after an immigration violation. Finally, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated November 10, 2005. The AAO notes that on February 1, 2002, the Acting Director denied a Form I-212 due to abandonment.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain alien previously removed.-

(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 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 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.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, counsel states that the Director erred in denying the Form I-212 because the applicant presented evidence to show hardship to his sick U.S. citizen son and his LPR mother and submits documentation previously submitted with the filing of the Form I-212.

Before the AAO can review the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. As noted above, the applicant was removed from the United States on April 10, 1998. He reentered the United States on or about August 8, 1998, without a lawful admission or parole and without permission to reapply for admission. Because the applicant illegally reentered the United States after his removal, the applicant is clearly inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

Section 212(a)(9)(C) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(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.

An alien who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not apply for consent to reapply unless more than ten 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)(i)(II) 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 April 10, 1998, less than ten years ago. The applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility 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.