

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

HL4

PUBLIC COPY

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 23**

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 and the application declared unnecessary.

The applicant is a native and citizen of Mexico who on November 16, 1994, at the Calexico, California, Port of Entry applied for admission into the United States. The applicant was found excludable pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged and assisted an individual to try to enter the United States in violation of law. The applicant was convicted in the United States District Court for the Southern District of California for violating 8 U.S.C. 1324(a)(2)(A). The applicant was placed in deportation proceedings and on January 13, 1995, an immigration judge ordered the applicant excluded and deported from the United States. Consequently, on January 17, 1995, the applicant was deported from the United States. 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 as a non-immigrant visitor.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones, and denied the Form I-212 accordingly. *See Director's Decision* dated November 10, 2005.

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.

On appeal, the applicant states that his Form I-212 was denied because he did not show that he remained outside the United States for a period of five years from the date of his removal. The applicant submits documentary evidence to prove that he has been residing continuously in Mexico since the date of his deportation.

The AAO notes that the Form I-212 was denied because the Director determined that the unfavorable facts outweighed the favorable ones and not, as stated by the applicant, because he did not prove that he remained outside the United States since his deportation.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

To recapitulate, the applicant was excluded and deported from the United States on January 17, 1995. The record of proceeding does not reflect that the applicant re-entered the United States after his removal. The applicant states that he resides in Mexico and there is no documentary evidence to show otherwise. Based on the evidence submitted on appeal, the AAO finds that the applicant has been residing and working in Mexico since the date of his removal, January 17, 1995. 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)(E)(i) of the Act, for knowingly encouraging, assisting, abetting, aiding an alien to try to enter the United States in violation of law. Since the applicant wishes to visit the United States as a non-immigrant visitor, he must file a waiver of his ground of inadmissibility pursuant to section 212(d)(3) of the Act.

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