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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 23 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: 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.

The applicant is a native and citizen of Mexico who, on April 17, 1999, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented a counterfeit Mexican passport with a stamp indicating that he had been granted permanent resident status. 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, 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 or other valid entry document. Consequently, on April 18, 1999, 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). On April 25, 1999, the applicant applied for admission into the United States by presenting a valid Mexican passport containing a non-immigrant visa that did not belong to him. The applicant once again was found inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act and was expeditiously removed from the United States. On February 3, 2001, the applicant entered the United States without a lawful admission or parole as part of a smuggling scheme. Border Patrol Agents apprehended the applicant and a Notice to Appear (NTA) for a hearing before an immigration judge was served on him. The applicant was designated as a material witness and was released on his own recognizance with the stipulation that at the conclusion of the criminal proceedings, he would turn himself into Service custody for voluntary return to Mexico. On July 18, 2001, the applicant was ordered to appear at the San Diego, California District Office in order to be removed from the United States. The applicant failed to appear for removal. On December 4, 2001, the applicant failed to appear for a removal hearing and was subsequently ordered removed *in absentia* pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(A)(i), for having been present in the United States without being admitted or paroled. The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by his U.S. citizen father. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He now 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 father and siblings.

The Director determined that the applicant was inadmissible pursuant to section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for one year or more, 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 December 8, 2005.

The proceeding in the present case is for an application for permission to reapply for admission into the United States and, therefore, the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(9)(B) of the Act. If the Form I-212 is granted and the applicant is found inadmissible under section 212(a)(9)(B) of the Act, he may be eligible to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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

(A) Certain aliens 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 aliens 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, filed by the applicant's father, he states that the applicant is presently living in Mexico awaiting the decision of the appeal. The applicant's father states that the applicant violated the immigration laws because he wanted to be in the United States with him (the father). According to the applicant's father, the applicant departed the United States in June of 2001 after the officer who was in charge of his case told him that he could leave the country. In addition, the applicant's father states that the applicant never received a notice to appear for a hearing or the decision made by the immigration judge. Additionally, he states that the applicant understands that he has violated the immigration laws but asks that the applicant be given an opportunity to become a lawful permanent resident. Finally, the applicant's father states that his oldest son died recently. The applicant's father claims that he suffered a stroke and he fears that if the application is not approved, he will be separated from the applicant for the rest of their lives.

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 expeditiously removed twice from the United States on April 18, 1999, and on April 25, 1999. He reentered the United States on February

3, 2001, 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 an unknown date, but after February 4, 2001, the date he was served with an NTA, 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.