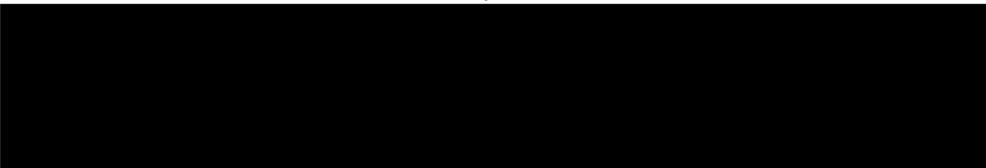




U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JAN 18 2007

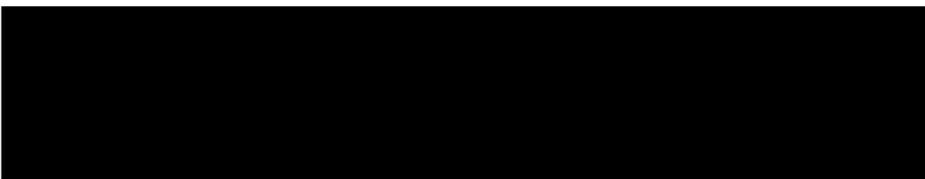
IN RE:

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 Acting Director, Nebraska 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 entered the United States without a lawful admission or parole in September 1989. The Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and an Order to Show Cause (OSC) for a hearing before an immigration judge was served on him on March 12, 1991. On August 15, 1991, an immigration judge ordered the applicant deported pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for entering the United States without inspection. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on June 23, 1993. On June 29, 1993, a Warrant of Deportation (Form I-205) was issued. Consequently, on July 6, 1994, the applicant was deported to Mexico. The record reflects that the applicant reentered the United States in September of 1995 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 record further reflects that the applicant departed the United States on an unknown date but after May 9, 2003, the date he signed a Medical Examination of Aliens Seeking Adjustment of Status (Form I-693) and appeared for a medical examination in Chicago, Illinois. The applicant presently resides in Mexico. 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 travel to the United States and reside with his U.S. citizen spouse and child.

The Acting Director determined that the Form I-212 was improperly filed with the Nebraska Service Center since the applicant resides in Mexico and should have filed the Form I-212 with the appropriate American Consulate overseas. The Acting Director denied the Form I-212 accordingly. *See Acting Director's Decision* dated December 19, 2005.

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.

On appeal, counsel states that the Acting Director's decision is incorrect as a matter of law, and pursuant to 8 C.F.R. § 212.2(d) the applicant must file the Form I-212 with the District Director having jurisdiction over the place where the deportation proceedings were held. Counsel requests that the decision be reversed and remanded for adjudication on the merits.

Counsel's statement is not persuasive. To recapitulate, the applicant was deported from the United States on July 6, 1994, and reentered in September 1995. The applicant departed the United States after May 9, 2003. The applicant was unlawfully present in the United States from April 1, 1997, the date calculation for unlawful presence begins, until the date of his departure. It was this departure that triggered his inadmissibility for unlawful presence. Consequently, he accrued unlawful presence for a period of more than one year and, therefore, the applicant is clearly inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. Accordingly, the applicant is required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Secretary has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Secretary that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The regulation at 8 C.F.R. 212.2(d) states in pertinent part:

Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. If the applicant also requires a waiver under section 212(g), (h), or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I-212 with the American consul having jurisdiction over the

alien's place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

The regulation at 8 C.F.R. 103.2 states in pertinent part:

Applications, petitions, and other documents.

(a) Filing-(1) General. Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The applicant is presently residing in Mexico. He requires waivers of grounds of inadmissibility under sections 212(a)(9)(B)(v) of the Act, and 212(a)(9)(A)(iii) of the Act. Pursuant to the regulation at 8 C.F.R. 212.2(d), he must file Forms I-601 and I-212 with the American consul having jurisdiction over his place of residence.

The AAO finds that the Form I-212 was not filed with the office that had jurisdiction to adjudicate it. In view of the foregoing, the AAO finds that the Acting Director was correct and did not have jurisdiction.

ORDER: The appeal is dismissed.