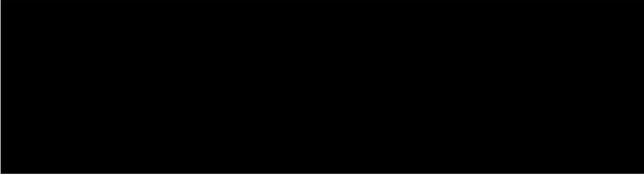




U.S. Citizenship
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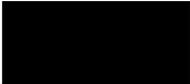
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JUL 26 2007

FILE:



Office: SAN ANTONIO, TX Date:

IN RE:



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 District Director, San Antonio, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who, on August 28, 2002, filed the Form I-212. On the Form I-212, the applicant states that he was removed from the United States on March 7, 2002. The record indicates that the applicant has since remained outside the United States. The district director found the applicant inadmissible under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A) and the applicant 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 to reside with his U.S. citizen spouse and children.

The district director determined that the applicant had failed to comply with a request for further evidence in regard to his convictions. The district director also determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision* dated February 20, 2003.

On appeal, the applicant's spouse contends that the applicant should be granted permission to reapply for admission because she and her children require the applicant's support. *See Form I-290B and Letter*, dated March 20, 2003. In support of the appeal, the applicant's spouse submits only the referenced letter. The entire record was reviewed in rendering a decision in this case.

The AAO finds that there is insufficient evidence in the record to determine that the applicant is inadmissible under section 212(a)(9)(A) of the Act and he is, therefore, not required to receive permission to reapply for admission at this time.

Section 212(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.
- (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 who 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 on a 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 Secretary has consented to the alien's reapplying for admission.

The record reflects that, on February 26, 2002, immigration officers apprehended the applicant while he was serving time in jail in McClennan County, Texas and that, on February 28, 2002, the applicant was permitted to return to Mexico voluntarily. *Form I-213*, dated February 28, 2002. There is no evidence that the applicant was returned to Mexico on March 7, 2002, as he indicates on the Form I-212, or on any other date. Accordingly, the record does not establish that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant has ever been removed from the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the district director will be withdrawn and the application for permission to reapply for admission will be declared moot. However, the AAO notes that the applicant may need to file an application for permission to reapply for admission if it is later established that he was previously removed from the United States.

The AAO also notes that the applicant may be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being convicted of a crime involving moral turpitude, i.e., a conviction for burglary. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), which was denied on August 31, 2005 for lack of prosecution.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for permission to reapply for admission is declared moot.