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U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAR 12 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.

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 entered the United States without a lawful admission or parole in February 1988. On December 13, 2001, an immigration judge granted the applicant's application for waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), and granted him adjustment of status under section 245 of the Act. The record reflects that on August 20, 2002, in the Arizona Superior Court, Pima County, the applicant was convicted of the offense of aggravated assault with a deadly weapon, in violation of A.R.S. 13-1204A(2), (B). The applicant was placed in removal proceedings and on October 15, 2004, an immigration judge ordered the applicant removed from the United States pursuant to section 237(a)(2)(A)(iii) of the Act, for having been convicted of an aggravated felony at any time after admission. Consequently, on October 16, 2004, the applicant was deported from the United States. The applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 children and parents.

The Director determined that the applicant is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and not eligible for any exception or waiver under the Act. In addition, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. See *Director's Decision* dated April 18, 2006.

On appeal, counsel submits a brief in which he states that the Director failed to consider the pertinent factors in adjudicating the Form I-212 and his decision is an abuse of discretion and is "arbitrary" and "capricious." In addition, counsel states that based on the decision in *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996) the applicant remains eligible for a waiver of his criminal offense under section 212(h) of the Act. Additionally, counsel states that the Director did not offer any explanation for his conclusion and his findings as required by case law. Counsel discusses the applicant's favorable factors and points out that this U.S. children and common law spouse will suffer extreme hardship if he is not permitted to enter the United States. Counsel further states that the applicant's prior criminal record was previously waived by an immigration judge and thus may not be used against him.

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

(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 the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The AAO notes that on December 13, 2001, an immigration judge granted the applicant a waiver under section 212(h) of the Act. This waiver covered the applicant's inadmissibility up the date it was granted and cannot be used for grounds of inadmissibility that occurred after December 13, 2001. *Matter of Mendez, supra*, referred to by counsel, did not deal with an aggravated felony conviction. The present matter does involve an aggravated felony, therefore, *Matter of Mendez*, does not apply to the applicant.

Before the AAO can weigh the discretionary factors in this case, it must first determine if the applicant can benefit from a waiver of inadmissibility due to his August 20, 2002, criminal conviction. As noted above, the applicant was removed from the United States for having been convicted of an aggravated felony.

Section 212(h) of the Act provides, in pertinent part, that:

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

The applicant in the instant case was granted lawful permanent resident status on December 13, 2001. Since the applicant was previously admitted as a lawful permanent resident and was convicted of an aggravated felony, no waiver is available to him under section 212(h) of the Act.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly, as the applicant is not admissible to the United States, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.