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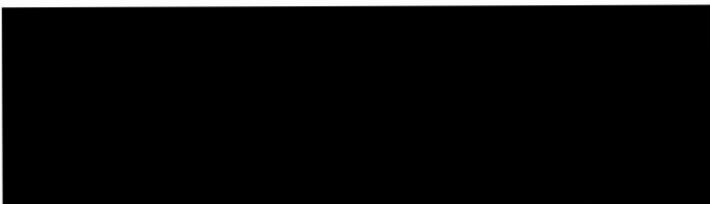
U.S. Department of Homeland Security
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Washington, DC 20529



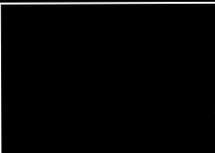
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER
consolidated therein]

Date: APR 22 2008

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) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The record establishes that the applicant is a native and citizen of Mexico who attempted to enter the United States on February 9, 2002, by presenting a Form DSP-150 (border crossing card) in someone else's name. The applicant was expeditiously removed on the same day. On March 21, 2002, the applicant's father, [REDACTED], a lawful permanent resident of the United States, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 20, 2004, the applicant's father became a United States citizen. On February 6, 2005, the applicant's Form I-130 was approved. Based on the applicant's previous order of removal, the applicant is inadmissible to the United States under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A). Additionally, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact in order to seek admission into the United States. 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 reside with his United States citizen father, lawful permanent resident mother, and siblings.

The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for being ordered removed, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for his misrepresentation in order to enter the United States, and she denied the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated February 21, 2007.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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.

A review of the record reflects that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant and his parents claim the applicant has been residing in Mexico since his expedited removal on February 9, 2002, which is more than the statutory 5 year period. Additionally, the applicant applied for his visa in Mexico. The AAO finds that the applicant no longer needs permission to reapply for admission after his removal. However, the applicant is still inadmissible under

section 212(a)(6)(C)(i) of the Act, for his misrepresentation, for which a waiver is available under section 212(i) of the Act.

ORDER: The appeal is dismissed as the applicant is no longer inadmissible and the underlying application is moot.