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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CHICAGO, IL

Date: **JUL 24 2008**

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:



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 District Director, Chicago, Illinois, 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.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 1, 1974, was admitted to the United States as a lawful permanent resident. On May 21, 1976, the applicant was convicted of willfully and knowingly aiding and abetting aliens in entering the United States illegally in violation of 8 U.S.C. § 1325 and 18 U.S.C. § 2. The applicant was sentenced to 6 months in jail. The applicant's sentence was suspended in favor of 3 years of probation. On January 11, 1978, the applicant applied for admission to the United States at the El Paso, Texas Port of Entry. The applicant presented his lawful permanent resident card. Upon inspection it was discovered that the applicant had been convicted of smuggling aliens into the United States. The applicant also admitted to entering into a fraudulent marriage solely for the immigration purpose of obtaining his lawful permanent resident status. On the same day, the applicant was placed into proceedings. On November 4, 1980, the immigration judge determined that the applicant had engaged in marriage fraud solely for immigration purposes, had been convicted of smuggling aliens into the United States and ordered the applicant removed. The applicant appealed the decision to the Board of Immigration Appeals (BIA). On February 4, 1982, the BIA dismissed the applicant's appeal. On June 8, 1982, the applicant was removed from the United States and returned to Mexico.

On September 17, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on his behalf by his current spouse, [REDACTED]. On January 16, 2007, the Form I-130 was approved. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to reside in the United States with his U.S. citizen spouse.

The district director determined that the applicant was statutorily ineligible to apply for permission to reapply for admission to the United States because he is inadmissible pursuant to section 212(a)(9)(C) of the Act and he had not remained outside the United States for a period of ten years prior to applying for permission to reapply for admission. The district director denied the Form I-212 accordingly. *See District Director's Decision* dated January 16, 2007.

On appeal, counsel contends that the district director's denial of the Form I-212 is factually erroneous, arbitrary, capricious and contrary to applicable law and regulations. *See Form I-290B*, received February 14, 2007. The Form I-290B indicated that counsel would submit a separate brief or evidence on appeal within 30 days. Counsel subsequently filed a request for extension of time in which to submit the additional evidence or brief because he was awaiting a response to a Freedom of Information Application (FOIA) he had filed. Counsel was permitted an extension until July 5, 2007. On May 28, 2008, the AAO informed counsel that he had five days in which to submit additional documentation to support the appeal. Counsel responded that he had not filed a brief and/or additional evidence to support the appeal. The record is, therefore, considered complete.

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.

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-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(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 Attorney General [now the Secretary of Homeland Security, "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.

The record reflects that, on June 8, 1982, the applicant was removed from the United States. On August 31, 1982, the applicant filed a Form I-212, which was approved on the same day. *See Form I-212*, received August 31, 1982. On January 14, 1983, the applicant was paroled into the United States. As the applicant has already received permission to reapply for admission with regard to his 1982 removal order and returned to the United States on parole, sections 212(a)(9)(A) and 212(a)(9)(C) of the Act do not apply to him. The AAO therefore finds that the applicant is not required to apply for permission to reapply for admission to 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 is inadmissible to the United States pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), as an alien who has, at any time, knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law and no waiver is available.<sup>1</sup> Therefore the applicant is permanently and mandatorily ineligible for adjustment of status or admission to the United States.

**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.

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<sup>1</sup> The record reflects that the applicant was convicted of alien smuggling on May 21, 1976. The applicant identified the aliens he aided and abetted in entering the United States in violation of law as his cousins. *See Applicant's Letter in Support of Form I-212*, dated February 28, 1999. The applicant is, therefore, statutorily ineligible for the exception set forth in section 212(a)(6)(E)(ii) of the Act or the waiver available in section 212(d).