**U.S. Department of Homeland Security**
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**U.S. Citizenship and Immigration Services**

H4

data deleted to prevent unwarranted invasion of personal privacy

FEB 02 2004

FILE: [redacted] Office: DENVER, CO Date:

IN RE: [redacted]

PETITION: 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 PETITIONER: SELF-REPRESENTED

PUBLIC COPY

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, Director
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 District Director, Denver, Colorado, 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 attempted entry into the United States on January 3, 2000, by claiming to be a lawful permanent resident alien. Following further inquiry, the applicant was found to be inadmissible to the United States at entry under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(7)(A)(i)(I), for having attempted to procure admission into the United States by fraud or willful misrepresentation and as an alien not in possession of a valid visa or lieu document. The applicant was removed from the United States under section 235(b)(1)(A)(i) of the Act, 8 U.S.C. § 1225(b)(1)(A)(i). Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

The applicant became a legal permanent resident of the United States on April 29, 1989. On March 23, 1999, the applicant was convicted in the District Court of Weld County, Colorado, of Third Degree Assault in violation of CRS 18-3-204 and was sentenced to one year in prison, suspended. On April 5, 1999, the applicant was ordered removed from the United States by an immigration judge and was subsequently removed to Mexico on April 8, 1999. 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 join his family residing in the United States.

The district director determined that in light of the foregoing facts and the applicant's disregard of U.S. immigration laws, the I-212 application should be denied. The application was denied accordingly. *See* Decision of the District Director, dated February 10, 2003.

On appeal, the applicant's mother states that she is requesting permission for the applicant to enter the United States on a humanitarian visa to visit his ill father. In support of this assertion, the applicant's mother submits a letter written by the physician treating the applicant's father, dated March 5, 2003 and color copies of four photographs of the applicant's father.

The record also contains an affidavit signed by the applicant's father, mother and six additional family members, dated November 2, 2001; copies of the naturalization certificates for the applicant's mother and father; a copy of the permanent resident card issued to a sister of the applicant; copies of the naturalization certificates for four additional family members and a copy of the U.S. birth certificate of a sister of the applicant. The entire record was reviewed and considered in rendering a decision.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> > (A) Certain aliens previously removed.-
> >
> > . . . .
> >
> > (ii) [A]ny alien . . . who-

> (I) Has been ordered removed under section 240 or any other provision of law . . . 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 the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

*Matter of Tin,* 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factor in the application is the hardship imposed on the applicant's family by his inadmissibility to the United States.

The unfavorable factors in the application include the applicant's criminal record; the applicant's removal from the United States on April 8, 1999; the applicant's attempt to reenter the United States without permission and the resulting 20 year bar to reentry. The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country nor does the record demonstrate that the applicant possesses a moral character or respect for law and order.

The AAO acknowledges the applicant's submission of documentation attesting to the illness of his father who is residing in the United States. *See* Letter from [redacted] dated March 5, 2003. However, when balanced against the weight of the unfavorable factors in the application, hardship to the applicant's father does not warrant a finding in favor of the applicant.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The district director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

**ORDER:** The appeal is dismissed.