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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER, VT Date: FEB 11 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission after Removal into the United States after Deportation under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(ii)

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reopen and reconsider. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Guatemala was found to be inadmissible to the United States under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(i)(II) the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(i)(II) for having reentered the United States without being admitted after having been ordered removed.

The director determined that the unfavorable factors outweigh the favorable ones and denied the application according. The AAO affirmed that decision on appeal and concluded that § 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief.

On motion, the applicant requests his case be reopened and reconsidered because the AAO decision dated May 7, 2003 states that that he must remain outside the United States for at least 10 years before his application for permission to reapply will be consider and he must be present in the United States for NACARA benefits, his wife gave birth to their first child and she had a difficult pregnancy. It is noted that the applicant withdrew his NACARA application and is therefore ineligible for any benefits under that Act.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The record reflects that the applicant was granted voluntary departure until February 10, 1997. He failed to depart by that date. The applicant stated on his Form I-881 that he departed the United States on April 3, 1997 triggering his deportation. He then reentered the U.S. illegally on June 10, 1997. Notwithstanding the arguments in the motion to reopen and reconsider, § 241(a)(5) of the Act is very specific and applicable.

Section 241(a) detention, release, and removal or aliens ordered removed.-

> (5) reinstatement of removal orders against aliens illegally reentering.- if the attorney General finds that an aliens has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the aliens is not eligible and may not apply for any relief under this Act [chapter], and the aliens shall be removed under the prior order at any time after reentry.

The issues in this matter were thoroughly discussed by the director and the AAO in their prior decisions. No new issues have been presented for consideration. Since the applicant is subject to the provision of § 241(a)(5) of the Act and not eligible for any relief under this Act, the motion will be dismissed.

ORDER: The motion is dismissed. The order of May 7, 2003, dismissing the appeal is affirmed.