U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 19 2004

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:

[redacted]

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 Director, Vermont 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 inspection in October 1988. On September 9, 1991, the applicant was arrested while working illegally at a restaurant in Maryland. On October 15, 1991, the applicant was granted voluntary departure for the United States on or before May 15, 1992. The applicant failed to comply with the terms of his voluntary departure and was ordered deported from the United States on December 10, 1992. The applicant failed to appear from his arranged departure by the Immigration and Naturalization Service [now Immigration and Customs Enforcement (ICE)]. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) (EAC-00-120-53384). 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 reside with his U.S. citizen child.

The director determined that the unfavorable factors in the application outweighed the favorable factors and therefore, the Form I-212 application should be denied. The application was denied accordingly.

On appeal, counsel asserts that the applicant did depart from the United States as required and that denial of his application for permission to reapply will cause extreme hardship to his U.S. citizen child.

In support of these assertions, counsel submits a Mexican travel document without translation; a copy of the U.S. birth certificate of the applicant's child; letters of support and a copy of the deed for property owned by the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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 factors in the application are the applicant's approved Form I-140; the applicant's paternity of a U.S. citizen and the fact that he does not appear to have a criminal record.

Counsel contends that the applicant's U.S. citizen child will experience hardship as a result of the applicant's inadmissibility to the United States. The AAO notes that counsel makes no assertions regarding the immigration status of the applicant's spouse or any other children that the applicant may have. The record indicates that the applicant has "three beautiful children." *See* Letter from [redacted] dated July 12, 2001. Counsel does not attempt to explain the nature or extent of hardship to the applicant's family as a result of the applicant's removal from the United States beyond stating, "Petitioner's deportation would cause Petitioner's United States citizen child and family an extreme hardship." *See* Request for Reconsideration of the Service Center's Decision Denying Petitioner's Permission to Reapply for Admission into the United States After Deportation or Removal, dated July 11, 2001. The record does not demonstrate hardship to the applicant's U.S. citizen child or other family members.

The unfavorable factors in the application include the applicant's entry into the United States without inspection; the applicant's failure to comply with the terms of his voluntary departure; the applicant's failure to comply with the terms of his ordered deportation and the applicant's illegal work history in the United States. Although counsel contends that the applicant did depart from the United States on January 6, 1993, the record is inconclusive in establishing this fact. If the applicant did depart as contended by counsel, he did so after the expiration of his period of voluntary departure and after he was ordered to appear for removal by ICE. Further, if the applicant departed from the United States and subsequently reentered, he did so without an approved Form I-212 and is therefore subject to reinstatement of his prior removal order under section 241(a)(5) of the Act. The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The 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.