U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 7 2004

IN RE: [redacted]

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:

[redacted]

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, California 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 was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on May 16, 1999. The applicant is married to a naturalized citizen of the United States and 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 wife.

The director determined that the applicant failed to establish that the positive factors in his application outweighed the negative factors. The director denied the I-212 application accordingly. *Decision of the Director*, dated September 9, 2003.

On appeal, counsel asserts that the application was erroneously denied. *Form I-290B*, dated October 7, 2003.

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.-
> >
> > > (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) [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 record reflects that on May 16, 1999, the applicant presented a Mexican passport containing a counterfeit I-551 stamp in his name. Subsequently, the applicant was removed from the United States under section 212(a)(6)(C)(i) and section 212(a)(7)(A)(i)(I) of the Act.

The favorable factors in the application include the hardship imposed on the applicant's spouse by his inadmissibility to the United States. Further, the applicant has remained outside of the United States in compliance with the terms of his removal order. The AAO notes that the record does not assert any specific claims of hardship to the applicant's spouse.

The unfavorable factors in the instant application include the applicant's fraudulent misrepresentation to immigration inspectors resulting in inadmissibility to the United States and requiring the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601) in addition to the instant application. In addition, as indicated by the director, the applicant lacks any basis for legal entry into the United States as an intending immigrant as the record does not reflect that a Petition for Alien Relative has been filed on the applicant's behalf.

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.