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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER, CA Date: MAR 11 2004

IN RE: Applicant: [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: 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 application for permission to reapply for admission after removal was denied by the 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 on December 31, 1999, was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under this Act. The applicant was ordered removed from the United States under § 235(b)(1) of the Act 8 U.S.C. 1225, after having been found inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). The record reflects that the applicant was present in the United States without a lawful admission or parole in October 2000 and without permission to reapply for admission in violation of § 276 of the Act, 8 U.S.C. 1326 (a felony). On February 20, 2001 his deportation order was reinstated pursuant to section 241(a)(5) of the Act and the applicant was removed to Mexico. The applicant is inadmissible under § 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and he now 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 travel to the United States to reside with his U.S. citizen spouse.

The director determined 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 and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director Decision* dated July 25, 2003.

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 alien 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 alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

The AAO finds the director erred in finding that section 241(a)(5) of the Act applies in this case since the applicant did not re-enter the United States after the reinstatement of his removal order and his second removal on February 20, 2001. Nevertheless, this office finds the director's error to be harmless. The applicant is clearly inadmissible under section 212(a)(9)(A) of the Act.

Section 212(a)(9)(A) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
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> . . . .
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> (ii) Other aliens.-Any alien not described in clause (i) who-
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> (I) has been ordered removed under section 240 or any other provision of law . . . [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 of an 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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, the applicant submitted a statement in which he is asking that his application for permission to reapply for admission into the United States after deportation be approved so he can reside with his U.S. citizen spouse and child and provide them with moral and economic support.

The record further reflects that the applicant represented himself to be a citizen of the United States in order to gain admission into the United States at the San Ysidro Port of Entry on December 31, 1999. In a sworn statement the applicant admitted that he falsely represented himself to be a United States citizen before an immigration officer. After questioning the applicant confirmed that he was a native and citizen of Mexico. The applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(ii) FALSELY CLAIMING CITIZENSHIP-

(I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Several sections of the Act were added and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). According to the reasoning in *Matter of Soriano,* 21 I&N Dec. 516 (BIA 1996) the provisions of any legislation modifying the act must normally be applied to waiver applications adjudicated on or after the enactment date of the legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996 and applies to all false representations made on or after that date.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provision of § 212(a)(6)(C)(ii) of the Act. No waiver of the ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act is available to an alien who made a false claim to United States citizenship. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.