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

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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: MAR 26 2004

IN RE: Applicant: [redacted]

APPLICATION: Applications 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 (i) and 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 District Director, Phoenix, Arizona, 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 October 21, 1997 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 section 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 removed on October 21, 1997 and returned to the United States without a lawful admission or parole on or about October 30, 1997 and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant's previous order was reinstated, he was removed from the United States on May 7, 1999 and is presently in Mexico. The applicant is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and she 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 spouse and children.

The district director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act and denied the waiver application and the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See District Director Decisions* dated May 15 and 16, 2000.

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

> (A) Certain aliens previously removed.-
>
> . . . .
>
> (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's spouse (Ms. submits a statement in which she is asking that the applicant's application for permission to reapply for admission into the United States after deportation be approved so he may travel to the United States in order to reside with her. Ms. tates that the applicant is a hard worker and a good provider and that since he has been gone she has to work long hours in order to provide for her family.

The record reflects that on October 21, 1997 the applicant represented himself to be a citizen of the United States in order to gain admission into the United States at the Bridge of the Americas Port of Entry in El Paso Texas. The applicant presented a California birth certificate that did not belong to him claiming to have been born in Santa Ana, California. Therefore, 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.
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> (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 section 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.