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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 14 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:

PUBLIC COPY

[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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 June 30, 1998, was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who attempted to procure admission into the United States by fraud and willful misrepresentation of a material fact. The applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Act 8 U.S.C. § 1225, after having been found inadmissible under section 212(a)(6)(C)(i) of the Act. On July 5, 1998, the applicant applied for admission to the Untied States at the San Ysidro Port of Entry. He represented himself to be a citizen of the United States and presented a California birth certificate that did not belong to him claiming to have been born in Los Angeles County, California. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of 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 and was removed to Mexico. The record further reflects that on July 27, 1999, the applicant again applied for admission into the United States at the San Ysidro Port of Entry representing himself to be a U.S. citizen. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, was served with a Notice to Appear (Form I-862), and was removed to Mexico. The applicant is inadmissible under section 212(a)(9)(A)(i) the Act, 8 U.S.C. § 1182(a)(9)(A)(i) 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 reside with his spouse and children.

The Director determined that the applicant is not eligible for any exception or waiver under section 241(a)(5) of the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated December 4, 2003.

On appeal counsel asserts that Citizenship and Immigration Services (CIS) denied the application erroneously and ignored section 212(a)(9)(A)(iii) of the Act. Counsel further states that CIS failed to consider all relevant factors presented and the extreme hardship the applicant's family would suffer if the applicant were forced to depart the United States.

The record clearly reflects that the applicant represented himself twice to be a citizen of the United States in order to gain admission into the United States at the San Ysidro Port of Entry. 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.

There is no waiver available under this section of the Act.

The record of proceeding reflects that the applicant was removed to Mexico on June 30, 1998, July 7, 1998, and July 28, 1999, and reentered illegally after his last removal. He has never been granted permission to reapply for admission; therefore he is subject to the provision of section 241(a) (5) of the Act, 8 U.S.C. § 1231(a)(5) which states:

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.

Notwithstanding the arguments on appeal, the applicant is subject to the provisions of sections 212(a)(6)(C)(ii) and 241(a)(5) of the Act which are very specific and applicable and he is not eligible for any relief under the Act.

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.

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.