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

U.S. Citizenship and Immigration Services

[redacted]

H 4

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

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:

[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 after removal was denied by the Director, Nebraska 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 indicates that he initially entered the United Stases in July 1989 in possession of a nonimmigrant visa. The applicant departed the United States on an unknown date and on November 10, 1997, at the San Ysidro, California Port of Entry he attempted to procure admission into the United States. The applicant presented an Alien Registration Card (ARC) that did not belong to him. The applicant was found inadmissible 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) for having attempted to procure admission into the United States by fraud. Consequently on November 12, 1997, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record further reflects that the applicant reentered the United States fifteen days after his removal without a lawful admission or parole and without permission to reapply for admission in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He 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 remain in the United States and reside with his U.S. citizen spouse and children.

The Director determined that the applicant is inadmissible under Section 212(a)(9)(C) of the Act and is not eligible and may not apply for any relief since 10 years have not passed since his last departure and denied the Form I-212 accordingly. *See Director's Decision* dated September 11, 2004.

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

> (C) Aliens unlawfully present after previous immigration violations. -
>
> (i) In general. -Any alien who-
>
> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
>
> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) EXCEPTION. -Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

On appeal, counsel submits a brief, statements from the applicant, his spouse, children, and letters of recommendation regarding the applicant's character and the hardship his family would suffer if the application were not granted. In addition counsel states that the District Director should have granted the waiver application as the evidence established great hardship to the applicant's family. Furthermore counsel states that the District Director should have applied the provisions of section 212(a)(9)(B)(v) of the Act and allowed the applicant to apply for an I-212 waiver.

Section 212(a)(9)(B)(v) of the Act is not applicable in the present case because the applicant was found inadmissible under section 212(a)(9)(C) of the Act. Section 212(a)(9)(B)(v) of the Act refers to a waiver of inadmissibility pursuant to section 212(a)(9)(B)(i) of the Act and not section 212(a)(9)(C) of Act. Before the AAO can weigh the favorable versus and unfavorable factors in this case it must first determine if the applicant is eligible to apply for any relief under the Act.

The applicant was expeditiously removed from the United States on November 10, 1997. By his own admission he reentered the United States approximately fifteen days later without a lawful admission or parole and without permission to reapply for admission. The applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act and he does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. He is not eligible to apply for any relief under this Act until 10 years pass after the date of his last departure from the United States and the Secretary has consented to the alien's reapplying for admission.

In addition the AAO finds that the applicant is subject to section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5). As noted above the applicant was expeditiously removed from the United States on November 10, 1997, and reentered illegally after fifteen days. He has never been granted permission to reapply for admission.

Section 241(a) (5) of the Act 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 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 [chapter], and the alien shall be removed under the prior order at any time after reentry.

The applicant is subject to the provisions of sections 212(a)(9)(C)(i) and 241(a)(5) of the Act. The applicant is not eligible for any relief under the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.