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

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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: SPOKANE, WASHINGTON Date: JAN 13 2005

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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the District Director, Seattle, Washington, 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 attempted to procure admission into the United States on August 29, 1998, at the Port of Entry by being concealed inside the trunk of a vehicle. The applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document. Consequently, on August 30, 1998, 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 reflects that the applicant reentered the United States on September 25, 1998, 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). On July 21, 2001, the applicant married a U.S. citizen who filed a Petition for Alien Relative (Form I-130) on his behalf. On August 4, 2003, the applicant appeared at a Citizenship and Immigration Services (CIS) office for a scheduled interview regarding his application for adjustment of status. On the same day his prior removal order was reinstated pursuant to section 241(a)(5) of the Act and the applicant was removed to Mexico. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) 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 travel to the United States to reside with his U.S. citizen spouse and child.

The District 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 District Director's Decision* dated July 15, 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.

To recapitulate, the applicant was expeditiously removed from the United States on August 30, 1998. He reentered the United States on September 25, 1998, without a lawful admission or parole and without permission to reapply for admission and was removed again pursuant to section 241(a)(5) of the Act. He was unlawfully present in the United States for an aggregate period of more that one years and therefore he is subject to section 212(a)(9)(C)(i)(I) and (II) of the Act. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act.

On appeal, counsel submits a brief, a statement from the applicant's spouse, letters of recommendation regarding the applicant's character and the hardship his family would suffer if the applicant were not permitted to enter the United States. The applicant's spouse states that the applicant is a loving and responsible individual who has not committed any criminal act while living in the United States and has dedicated his life to work and his family. In addition she states that she and her child depend on the applicant for emotional and financial support and that since the applicant has been removed from the United States she had to give up her apartment due to her inability to pay her bills.

Notwithstanding the arguments on appeal the applicant is subject to the provisions of section 212(a)(9)(C)(i)(I) and (II) of the Act, which are very specific and applicable. The applicant is not eligible to apply for any relief under this Act unless 10 years pass after the date of his last departure form the United States and the Secretary has consented to the alien's reapplying for admission. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.