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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]

H4

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 21 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 U.S. After Deportation or 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 Uruguay who was admitted to the United States as a non-immigrant visitor on January 30, 1983 and was authorized to remain until July 29, 1983. An order to show cause was issued in his behalf on August 28, 1983 and he was ordered deported on January 5, 1984. The applicant was granted voluntary departure in lieu of deportation but failed to depart voluntarily until September 27, 1997, thus executing the departure order. The record reflects that the applicant was present in the United States without a lawful admission or parole on September 28, 1997 and without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). The applicant is inadmissible under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant seeks permission to reapply for admission into the United States in order to reside with his 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. The Director then denied the application accordingly. *See Director Decision* dated June 20, 2003.

On appeal, counsel states that the Director failed to consider the merits of the application. Counsel states that the applicant has never been arrested by the police or convicted of any crime that § 241(a)(5) of the Act does not apply in the matter and the applicant is not barred from relief.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(ii) Other aliens.- Any alien not described in clause (i) who -

(I) has been ordered removed under § 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

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,* Interim Decision 3289 (BIA, A.G. 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.

An appeal must be decided according to the law as it exists on the date it is before the appellate body. *See Bradley v. Richmond School Board,* 416 U.S. 969, 710-1 (1974. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. If an amendment makes the statute more restrictive after the application is filed the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Mater of George*, 11 I&N Dec. 419 (BIA 1965). *Mater of Leveque*, 12 I&N Dec. 633 (BIA 1968).

Prior to 1981, an alien who was arrested and deported from the United States was perpetually barred. In 1981 Congress amended former § 212(a)(17) of the Act, 8 U.S.C.(a)(17), eliminated the perpetual debarment and substituted a waiting period. The Service argued that most precedent case law relating to permission to reapply for admission was effectively negated by the new statute in 1991, and as a consequence, granting of these applications required an applicant to meet a higher standard of eligibility since the bar was not longer insurmountable.

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.

Section 241(a) detention, release, and removal or aliens ordered removed states in pertinent part:

> (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.

The applicant departed the United States on September 27, 1997 and reentered illegally on September 28, 1997. He has never been granted permission to reapply for admission. Notwithstanding the arguments on appeal, § 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provision of § 241(a)(5) of the Act, he is not eligible for any relief under this Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.