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

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: DENVER, COLORADO Date: JUN 16 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: 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 Interim District Director, Denver, Colorado and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who entered the United States without a lawful admission or parole in August 1996. On February 24 1998, the applicant was served with a Notice to Appear (NTA) for a removal hearing before an Immigration Judge and he was released on a $5,000 bond. On March 19, 1998, an Immigration Judge ordered the applicant removed from the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1182 (a)(6)(A)(i). Subsequently the applicant was removed on March 27, 1998. The record reflects that the applicant reentered the United States on March 29, 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). The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 Interim District Director determined that section 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 and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Interim District Director's Decision* dated May 3, 2004.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is not signed by the applicant. Therefore the AAO will not be sending a copy of the decision to the individual mentioned on the Form G-28, but this office will accept the submitted information.

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

. . . .

> (ii) Other aliens.-Any alien not described in clause (i) who-
>
> (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 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 alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (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, counsel states that the applicant previously filed an application for permission to reapply for admission after removal, which was denied by the Director, Nebraska Service Center on August 1, 2001. The decision was based on section 212(a)(9)(A) of the Act. Counsel states that since the Service did not assert section 241(a)(5) of the Act in it's August 1, 2001, decision the Service has waived it's right to assert that section of law and the matter is *res judicata.* In addition counsel states that the applicant's reentry on March 29, 1998, was prior to the enactment of the law involving re-entry.

Counsel's statements are not persuasive. Decisions subject to *res judicata* may not be revisited or reopened at all. The AAO never made a final decision on the case and therefore the Director's decision may be revisited or reopened. In addition the enactment date of the IIRIRA, Pub. L. No. 104-208, § 303(b)(3), 110 Stat. 3009, is April 1, 1997, and not April 1, 1998. The applicant reentered the United States on March 29, 1998; therefore he is subject to the provisions of section 241(a)(5) of the Act.

As noted above the applicant was removed to Mexico on March 27, 1998, and by his own admission reentered illegally without a lawful admission or parole on March 29, 1998. The applicant has never been granted permission to reapply for admission; therefore he is subject to the provisions of section 241(a) (5) of the Act, 8 U.S.C. § 1231(a)(5) which states:

Section 241(a) 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, and the alien shall be removed under the prior order at any time after the reentry.

Notwithstanding the arguments on appeal, section 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provisions of section 241(a)(5) of the Act, and he is not eligible for any relief under this Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.