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

PUBLIC COPY

[redacted]

MAR 23 2005

FILE: [redacted] Office: NEWARK, NEW JERSEY 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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who on December 16, 2000, at the Rainbow Bridge Port of Entry applied for admission into the United States as a non-immigrant visitor for pleasure. The applicant was found inadmissible under 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 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 an unknown date, but prior to February 20, 2001, the date of his marriage to a U.S. citizen, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant 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 spouse.

The 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 District Director's Decision* dated April 8, 2004.

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

(A) Certain alien previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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 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's removal order is invalid because one individual signed the removal order acting as both officer and supervisor. Counsel states that although the Notice and Order of Expedited Removal (Form I-860) provides for a supervisor's approval by telephone or other means, in the applicant's case the officer did not check the appropriate box on Form I-860 to indicate that a supervisor's concurrence was obtained. He further states that by doing so the applicant was denied the procedural due process to which he was entitled.

The AAO does not have jurisdiction over the circumstances surrounding the applicant's expedited removal from the United States. The fact remains that the applicant was removed from the United States on December 16, 2000, and he is therefore inadmissible under section 212(a)(9)(A)(i) of the Act. The proceeding in the present case is limited to the application for permission to reapply for admission into the United States after deportation or removal under section 212(a)(9)(A)(iii) of the Act. That is the only issue that will be discussed.

On appeal counsel states that the applicant is a person of good moral character, that he has always cooperated with the Service and that he and his wife would face hardship if the waiver application were not granted. Further, counsel states that the District Director erred in stating in his decision that the applicant reentered without inspection. According to counsel the applicant was inspected at the time of his last entry. Finally counsel states that the applicant's spouse submitted a Form I-130, which was approved after consideration of the "void removal order."

Counsel's statements are not persuasive. Counsel submits no evidence that the applicant was inspected at the time of his last entry. As noted above the applicant reentered the United States on an unknown date but prior to February 20, 2001, the record contains no evidence that this entry was with a lawful admission or parole. The adjudication and approval of Form I-130 deals with two issues: whether the petitioner has standing to file the petition and whether the beneficiary has the requisite familial relationship to qualify for the classification being sought. It does not deal with the applicant's inadmissibility to the United States under the Act. In addition the record of proceedings does not reveal that the removal order was ever determined to be "void." Finally, 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 record of proceeding reflects that the applicant was removed to Canada on December 16, 2000, and reentered illegally without a lawful admission or parole. 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 provision 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.