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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 09 2006

IN RE: [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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of El Salvador who, on June 26, 1999, at the Newark, New Jersey, Port of Entry, applied for admission into the United States. The applicant presented his El Salvadoran passport containing fraudulent back dated entry stamps into El Salvador. 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 June 27, 1999, 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). 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 enter the United States and reside with his spouse, children and U.S. citizen mother-in-law.

The director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being an alien who has been ordered removed. The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director then denied the Form I-212 accordingly. *See Director's Decision* dated March 17, 2005.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel asserts that the facts in this case establish that the applicant warrants a favorable exercise of discretion.

The AAO finds that the applicant is not inadmissible under section 212(a)(9)(A) of the Act and is not required to receive permission to reapply for admission.

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

> (A) Certain aliens 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.
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> (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, 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on a 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The AAO finds that the director erred in finding the applicant inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act. The applicant is an alien who has been expeditiously removed from the United States and would be inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) if he were seeking admission to the United States within 5 years after his removal from the United States. If an alien is described in section 212(a)(9)(A)(i) of the Act he is not inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act. The applicant's expeditious removal occurred on June 27, 1999, more than 5 years ago. Therefore, the applicant is not inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act and is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

The AAO notes that the director erred in finding the applicant was required to apply for permission to reapply for admission to the Untied States because, at the time the Form I-212 was adjudicated, it had been 5 years since the applicant's removal from the United States. A clear reading of the law reveals that the applicant is no longer inadmissible. He, therefore, does not require permission to reapply for admission, so the appeal will be dismissed, the decision of the director will be withdrawn and the permission to reapply for admission application will be declared moot. However, the AAO notes that the applicant will need to file an application for waiver of the 212(a)(6)(C)(i) inadmissibility grounds pursuant to section 212(i) of the Act.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the application for permission to reapply for admission is declared moot.