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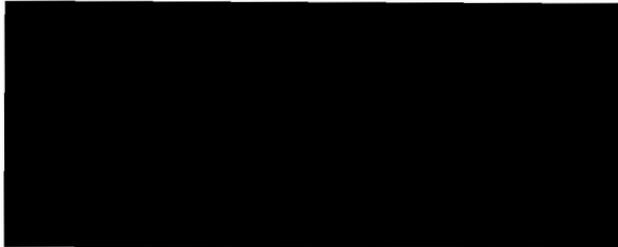
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN ANTONIO, TEXAS

Date: **MAY 11 2006**

IN RE:

Applicant:



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, Chief
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

The applicant is a native and citizen of Mexico who entered the United States without a lawful admission or parole on or about June 1, 1979. On November 16, 1987, the applicant was granted temporary resident status and on January 10, 1990, he adjusted his status to that of a Lawful Permanent Resident (LPR). On December 4, 1997, in the 175th District Court of Bexar County, Texas, the applicant was convicted of the offense of **Driving While Intoxicated (DWI). The applicant was sentenced to three years imprisonment. The record** reveals that prior to this conviction, the applicant had two additional convictions for DWI, on September 1, 1994 and on August 26, 1991. On March 20, 1998, a Notice to Appear (NTA) for a removal hearing before an immigration judge was issued. On January 12, 1999, an immigration judge ordered the applicant removed from the United States pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony at any time after admission. The applicant filed an appeal with the Board of Immigration Appeals (BIA) which was dismissed on July 21, 1999 as untimely filed. A Motion for Stay of Removal filed with the Fifth Circuit Court of Appeals was denied on October 29, 1999. Consequently, on September 24, 2000, 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). 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 travel to the United States and reside with his LPR mother and siblings.

The District Director determined that the applicant did not have an immigrant visa petition filed and approved on his behalf and since the applicant did not have a legal basis to enter the United States he is filing the Form I-212 in order to be allowed to reenter and live and work illegally. In addition, the District Director determined that the Form I-212 is deniable for lack of prosecution because of the applicant's failure to address the question about an immigrant visa. The District Director then denied the Form I-212 accordingly. *See District Director's Decision* dated July 6, 2004.

An appeal, filed by an individual by the name of Emilia Avalos, was received by the California Service Center on July 28, 2004.

The regulation at 8 C.F.R. § 103.3(a) states in pertinent part:

(1)General

. . . .

(iii) Appeal-

(B) Meaning of "affected party." For purposes of this section and Sec. Sec. 103.4 and 103.5 of this part, "affected party" (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

(2) AAU appeals in other than special agricultural worker and legalization cases.

(i) Filing appeal. The affected party shall file an appeal on Form I-290B. . .

The regulation at 8 C.F.R. § 292.1 states in pertinent part :

(a) A person entitled to representation may be represented by any of the following:

. . . .

(3) Reputable individuals. Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

(ii) He is appearing without direct or indirect remuneration and files a written declaration to that effect;

(iii) He has a pre-existing relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend), provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

The person filing the appeal is not an individual described in the regulation at 8 C.F.R. § 292.1(a) and, therefore, she cannot represent the applicant in this proceeding.

The regulation at 8 C.F.R. § 103.3(a)(2) states in pertinent part :

(v) Improperly filed appeal--

(A) Appeal filed by a person or entity not entitled to file it--

(1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

As the Form I-290B was filed by a person not entitled to file, the appeal must be rejected as improperly filed.

ORDER: The appeal is rejected.