U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: Office: VERMONT SERVICE CENTER Date: JUL 11 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal

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 application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The record reflects that the applicant is a native and citizen of Mexico who claims to have entered the United States without inspection in June 1997. On June 6, 2000, the applicant was placed into the custody of the Immigration and Naturalization Service after being stopped for traffic violations in Pennsylvania. On June 13, 2000, the applicant voluntarily departed the United States. On April 30, 2001, Phoenix Framing, LLC, filed an Application for Employment Certification (Form ETA 750) on behalf of the applicant. On May 8, 2002, the Form ETA 750 was certified by the Department of Labor. On April 10, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212).

The Director determined that the applicant is inadmissible pursuant to section 212(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a), for voluntarily departing the United States on June 13, 2000, and he denied the applicant's Form I-212. *Director's Decision*, dated February 6, 2007. However, the AAO notes that there is no evidence in the record that the applicant was ordered removed from the United States.

On appeal, the applicant claims he is the primary wage earner in the household and his family will suffer if he is removed from the United States. *Declaration by the applicant*, undated.

Section 212(a) states in pertinent part:

(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 section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and 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 aliens convicted of an aggravated felony) is inadmissible.

A review of the record reflects no indication that the applicant has been ordered removed from the United States; therefore, he is not required to file a Form I-212. The AAO notes that it appears that the applicant will have an Immigrant Petition for Alien Worker (Form I-140) filed on his behalf. However, the AAO finds that the applicant accrued unlawful presence from June 1997, the date the applicant entered the United States,

until June 13, 2000, the date the applicant voluntarily departed the United States; therefore, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II). If the applicant attempts to adjust his status in the United States by filing an Application to Register Permanent Residence or Adjust Status (Form I-485) or he applies for a visa, he will need to a file a Waiver of Grounds of Excludability (Form I-601), for his unlawful presence. The AAO notes that if the applicant has already applied for a visa or filed a Form I-1485, he should contact the office where he filed his application(s) to determine what further actions he needs to take.

ORDER: The appeal is dismissed as moot as it has not been established that the applicant was deported or removed from the United States.