U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK, NY Date: MAY 13 2009
; AND
RELATE)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom,
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, 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 applicant is a native and citizen of Mexico who, on February 20, 1998, appeared at the San Ysidro, California port of entry. The applicant presented a lawful permanent resident card bearing the name [redacted]" The applicant was placed into secondary inspections. The applicant admitted that he had presented his brother's lawful permanent resident card in order to attempt to enter the United States and that he was aware that it was illegal to do so. He admitted that he did not have valid documentation to enter the United States. 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 attempting to enter the United States by fraud. On February 22, 1998, 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 applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to April 15, 1998, the date on which he married his U.S. citizen spouse in the Bronx, New York. On December 6, 2006, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On April 23, 2007, the applicant filed the Form I-212. Both applications indicated that the applicant continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 reside in the United States with his U.S. citizen spouse and two U.S. citizen children.

The district director determined that the applicant is subject to reinstatement of his removal order and denied the Form I-212 accordingly. *See District Director's Decision* dated October 30, 2007.

On appeal, counsel contends that the district director erred in denying the applicant's Form I-212 in light of the Ninth Circuit Court of Appeals (Ninth Circuit) decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004) and that the applicant is entitled to adjudication of the Form I-212 on its merits. *See Counsel's Basis for Appeal,* dated November 21, 2007. In support of his contentions, counsel submits only the referenced basis for appeal. The entire record was reviewed in rendering a decision in this case.

The AAO has, in a separate decision, dismissed the applicant's appeal of the district director's denial of the Form I-601 filed by the applicant in relation to his inadmissibility for fraud under section 212(i) of the Act, 8 U.S.C. § 1182(i). In that the AAO has found the applicant to be ineligible for permission to reapply for admission under section 212(a)(9)(C)(iii) of the Act and thus denied the applicant's Form I-601, no purpose would be served in further adjudication of the applicant's Form I-212. Accordingly, the appeal of the district director's denial of the Form I-212 will be dismissed.

ORDER: The appeal is dismissed.