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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

#4

[redacted]

Date: FEB 2 1 2012 Office: SAN BERNARDINO, CA FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California, 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 remanded to the Field Office Director for further action consistent with this decision.

The record reflects that the applicant claims he is a native and citizen of Guatemala who further indicates he voluntarily returned to Mexico in May 1999, and then entered the United States without inspection later that month. The applicant was found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 remain in the United States with his U.S. Citizen spouse.

The Field Office Director determined the applicant was ordered removed under the alias [redacted] on May 1, 2008, and was also ordered removed on May 5, 1999. *See Field Office Director's Decision*, dated August 9, 2011. The Field Office Director found the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and denied the Form I-212 accordingly. *Id.*

On appeal counsel for the applicant contends the applicant never used the alias [redacted] and that he was never ordered removed by an immigration judge. Counsel additionally asserts that the applicant voluntarily returned to Mexico in May 1999, entered the United States without inspection later that month, and has resided in the United States ever since.

The record contains a brief in support of appeal, evidence of the approved I-130 Petition, correspondence, evidence of removal proceedings, and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (A) Certain aliens previously removed.-
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> (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-
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> (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 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 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 applicant claims he voluntarily returned to Mexico in May 1999; however, the Field Office Director indicates in the Form I-212 denial the applicant was removed on May 5, 1999. There is no evidence in the record regarding this 1999 removal or voluntary return, or whether this departure relates to the applicant. The record contains evidence of two other orders of removal, entered on May 1, 2008 and July 11, 2008. These orders of removal are related to [redacted] and [redacted] The record confirms that these orders relate to the same individual. There is no documentation in the record linking the applicant to the person who was ordered removed on May 1, 2008 and July 11, 2008.

The AAO therefore remands the matter to the Field Office Director for a fingerprint analysis to determine whether the applicant, using the name [redacted] is the same person as [redacted] a.k.a. [redacted] who was ordered removed on May 1, 2008 and July 11, 2008. Furthermore, the matter is remanded for evidence of the May 5, 1999 order of removal noted in the field office director's denial and whether it relates to the applicant.

Should the Field Office Director find the applicant and [redacted] a.k.a. [redacted] are not the same person, and that the applicant voluntarily departed the United States in May 1999, then the applicant is not inadmissible under section 212(a)(9)(A) of the Act and the Form I-212 is moot. In the alternative, should the Field Office Director find the applicant is the same person as the [redacted] a.k.a. [redacted] who was ordered removed twice in 2008, or that the applicant was ordered removed on May 5, 1999, the Field Office Director will return the file to the AAO for adjudication of the appeal of the Form I-212 waiver application.

ORDER: The matter is remanded to the Field Office Director for further proceedings consistent with this decision.