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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

H4

Date: JUN 18 2012 Office: TUCSON, ARIZONA 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Tucson, Arizona, 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 record reflects that the applicant is a native and citizen of Mexico who was removed from the United States on March 26, 2003 pursuant to an order of removal, and again on March 27, 2012 pursuant to a reinstated order of removal. The applicant is inadmissible to the United States under 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 reside in the United States with his U.S. Citizen wife and children.

The Field Office Director determined that the applicant was also inadmissible under section 212(a)(9)(C) of the Act and denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated February 29, 2012.

On appeal counsel for the applicant contends the applicant is not inadmissible under section 212(a)(9)(C) of the Act because he did not enter without inspection after being removed. Counsel additionally asserts that the applicant qualifies for a favorable exercise of discretion in this matter.

The record contains statements from the applicant and his spouse, documentation of criminal and immigration proceedings, evidence of birth, marriage, divorce, residence, and citizenship, letters of support from family and friends, other applications and petitions filed on behalf of the applicant, financial and educational documents, evidence of employment, and photographs. 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 record reflects that the applicant first entered the United States on September 16, 2002.[1] On March 26, 2003, the applicant was apprehended by immigration officials after he was arrested on charges of domestic assault. The applicant was ordered removed, and returned to Mexico that day. The applicant contends in April 2003 he was admitted to the United States after presenting his border crossing card to immigration officials. He subsequently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on or about July 13, 2009, which was denied on October 30, 2009.[2] On March 27, 2012 the applicant's 2003 order of removal was reinstated pursuant to section 241(a)(5) of the Act, and his departure to Mexico was verified. Due to the reinstated order, the applicant is inadmissible for 20 years after the date of his March 27, 2012 departure pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

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[1] The AAO notes that though the applicant now asserts he was admitted after presenting his border crossing card to immigration officials, he previously conceded in removal proceedings that he entered without inspection on September 16, 2002.

[2] The applicant subsequently filed another Form I-485 application on September 26, 2011.

> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
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> . . . .
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> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record does not contain sufficient evidence as to whether in April 2003 the applicant entered the United States without inspection or if he was admitted after presenting his border crossing card to immigration officials. The AAO will therefore not make a determination on the Field Office Director's fining of inadmissibility under section 212(a)(9)(C) of the Act. This issue should be further examined in any future applications. Regardless, the applicant began to accrue unlawful presence from April 2003 or the expiration of his authorized stay after admission, until he applied for adjustment of status in July 2009. His 2009 application for adjustment of status was denied on October 30, 2009, and he again accrued unlawful presence from the date of that denial until he filed another application for adjustment of status on September 26, 2011. The AAO finds that his accrual of more than one year of unlawful presence and his departure on March 27, 2012 render him inadmissible under section 212(a)(9)(B)(i)(II) of the Act. No waiver was filed for this ground of inadmissibility.

The record also reflects that the applicant has a 2003 conviction in [redacted] for domestic violence – assault. Due to this conviction the applicant may also be inadmissible under section 212(a)(2)(A) of the Act for having a conviction for a crime involving moral turpitude, for which a waiver under section 212(h) of the Act is required.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(9)(B)(i)(II) of the Act, and may be subject to the provisions of section 212(a)(2)(A) of the Act. The applicant has not filed a waiver of inadmissibility, therefore, no purpose would be served in the favorable exercise of discretion in

adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.