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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

DATE: APR 05 2013 Office: MONTERREY, MEXICO File:

IN RE:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Monterrey, Mexico, 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 failed to attend a removal proceeding and then departed the United States after a removal order had been entered. The applicant is 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 reside in the United States with his United States citizen spouse and children.

The Field Office Director determined that the applicant was also inadmissible under section 212(a)(9)(B)(v) of the Act, had failed to establish extreme hardship to a qualifying relative, denying the applicant's Form I-601 waiver application and then denying the Form I-212 as a matter of discretion. *See Field Office Director's Decision,* dated January 19, 2011.

On appeal, counsel for the applicant asserts the Field Office Director erred in denying the I-212 as a matter of discretion, and erred in finding that the applicant is inadmissible under section 212(a)(6)(B) of the Act.

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

> (A) Certain aliens previously removed.-
>
> > (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.

Section 212(a)(6)(B) of the Act states:

> Failure to attend removal proceeding. -Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

The record reflects that the applicant was ordered removed *in absentia* on July 1, 1999, having failed to attend his removal proceeding. A motion to reopen the removal proceeding was denied by an immigration judge and the Board of Immigration Appeals. A Removal Order was entered against the applicant on October 21, 2003. The applicant did not depart the United States until January 2010. The applicant departed the United States while a removal order was outstanding, and the applicant is, therefore, inadmissible 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.

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) based on his 212(a)(6)(B) inadmissibility, as well as for his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. *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 approving the application. The applicant's Form I-601 was denied due to his failure to show extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act and his inadmissibility under section 212(a)(6)(B) of the Act. The applicant's Form I-601 appeal has been dismissed due to the applicant's unreviewable inadmissibility under section 212(a)(6)(B) of the Act for which there is no waiver, and a determination that no purpose would have been served in reaching the merits of his claim under section 212(a)(9)(B)(v) of the Act. As the applicant remains mandatorily inadmissible to the United States under another section of the Act, no purpose is served in approving the present Form I-212 application and the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.