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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 0 6 2014 Office: LAS VEGAS [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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The record indicates that the applicant is a native and citizen of Mexico who entered the United States on July 23, 2010. The applicant was apprehended by U.S. immigration officials and arrested for having entered the United States without having been admitted or paroled. The applicant was taken into custody to serve as a material witness before the U.S. District Court for the Southern District of California. On November 12, 2010, the applicant was released from custody by the district court and received instructions to return to the United States to testify at a criminal hearing.

The Field Office Director determined that the record does not show that the applicant ever was ordered removed from the United States under any provision of the Immigration and Nationality Act (the Act), and therefore the applicant failed to establish eligibility for permission to reapply for admission into the United States. The Field Office Director also stated that the applicant currently resides in the United States and that relief under the provisions of Section 212(a)(9)(A)(iii) of the Act is only available to aliens seeking permission to reenter from outside the United States.[1] He denied the Form I-212 Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) accordingly as a matter of discretion and law. *See Decision of the Field Office Director,* dated November 15, 2013.

On appeal, counsel asserts that the applicant has established that his qualifying relative is suffering extreme hardship due to her separation from the applicant and submits additional evidence of such hardship.

The record includes, but is not limited to, Form I-290B, Notice of Motion or Appeal; counsel's brief, the applicant's wife's undated letter; medical documentation for the applicant's wife; and court documents related to the applicant's 2010 apprehension and release. Additional documentation the applicant submits in the Spanish language is unaccompanied by translations.[2] The entire record, with the exception of the Spanish-language documents, has been considered in this decision.

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

[1] The record includes no evidence showing the applicant is currently in the United States, and his wife indicates he has been in Mexico since November 2010.

[2] *See* 8 C.F.R. § 103.2(a)(3), which states that any document containing a foreign language submitted to the Service [now U.S. Citizenship and Immigration Services] shall be accompanied by a full English language translation certified as complete and accurate by a translator and by the translator's certification that he or she is competent to translate from the foreign language into English.

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.

(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 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 indicates that on July 23, 2010, the applicant was apprehended by U.S. immigration officials and arrested for having entered the United States without having been admitted or paroled. The applicant was charged as an alien present in the United States without being admitted or paroled and was placed into custody as a material witness for an alien-smuggling case before the U. S. District Court for the Southern District of California. On November 12, 2010, the U.S. District Court issued an Order Releasing Material Witness for the applicant, releasing him from custody. That day the U.S. Attorney for the Southern District of California gave the applicant a letter reminding him to appear as a material witness at a criminal hearing tentatively scheduled for December 1, 2010. The record does not indicate whether the applicant appeared for this hearing.

Although the applicant was issued a Form I-862, Notice to Appear on July 23, 2010, this notice does not appear to have been filed with an immigration court. The record includes no evidence that immigration-court proceedings ever were initiated against the applicant. Therefore, because the record does not reflect that the applicant was ordered removed from the United States, he is not inadmissible under section 212(a)(9)(A) of the Act and was not required to file a Form I-212 to request permission to reapply for admission into the United States.

ORDER: The appeal is dismissed as unnecessary.