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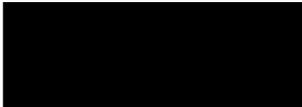
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FILE:



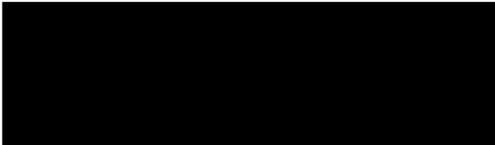
Office: CHICAGO, IL

Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 241(a)(5) of the  
Immigration and Nationality Act, 8 U.S.C. § 1231(a)(5)

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to section 241(a)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1231(a)(5), for having reentered the United States without inspection after deportation. The applicant has a U.S. citizen mother and a U.S. citizen son. He seeks a waiver of inadmissibility in order to reside in the United States with his mother and son.

The District Director found that based on the evidence in the record, the applicant was not eligible for a waiver of inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated December 16, 2004.

On appeal, counsel asserts that the denial in this case involves the impermissible and retroactive application of a 1996 law to a pre-1996 event. He further states that the language of the new statute applies only to "removal" orders, not deportation orders. Counsel notes that the applicant applied for adjustment of status prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act, therefore section 241(a)(5) does not apply to his application for adjustment of status. *Form I-290B; attorney's statement.*

Section 241(a) of the Act provides, in pertinent part:

(5) Reinstatement of removal orders against aliens illegally reentering.—If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The record indicates that the applicant entered the United States without inspection on August 26, 1977. *Record of Deportable Alien (Form I-213, dated September 8, 1977)*. On October 14, 1977 the applicant was deported to Guatemala. *Deportation Case Check Sheet (Form I-170)*. On February 7, 1979 the applicant reentered the United States without inspection (*Form I-213, dated February 8, 1979*) and was subsequently deported on March 1, 1979 (*Form I-170*). In March 1979 the applicant re-entered the United States without inspection. *Application to Register Permanent Residence or Adjust Status (Form I-485)*.

Inadmissibility due to removal or deportation is not cured through the filing of a Form I-601. The proper form is the Form I-212 Application for Permission to Reapply for Admission. See 8 C.F.R. § 212.2. There does not appear to be any ground of inadmissibility waivable under sections 212(9)(h) or (i) of the Act, therefore, the Form I-601 must be denied.

The AAO notes, however, that as noted by the District Director, the applicant may be subject to reinstatement of the prior order of deportation. The issue of whether section 241(a)(5) provisions of the Act apply retroactively to illegal reentries made prior to April 1, 1997, has been the subject of conflicting decisions by the Circuit Courts. However, on June 22, 2006, the Supreme Court of the United States held in *Fernandez-*

Vargas v. Gonzalez, 548 U.S. \_\_\_\_ (2006), that section 241(a)(5) of the Act applies to those who entered before IIRIRA and does not retroactively affect any right of, or impose any burden on the individual.

The applicant, in this case, has failed to establish that he had a reasonable expectation of relief from deportation at the time of his illegal reentry to the United States prior to April 1, 1997. At the time of his March 1979 reentry, the applicant had no reasonable expectation that he would be able to collaterally attack his prior deportation order that he was entitled to the prior procedural inefficiencies in the administration of immigration laws. The applicant, therefore, had no reasonable expectation of adjustment of status relief under pre-IIRIRA laws. Thus, as applied to the applicant, section 241(a)(5) of the Act does not impose any new duties or new liabilities. Contrary to counsel's assertions, section 241(a)(5) of the Act may apply retroactively to the applicant. Though his March 1979 deportation has not yet been reinstated, he is clearly subject to section 241(a)(5) of the Act and his prior deportation order may be reinstated at any time.

As the Form I-601 was not the proper form to be filed in this case, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.