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**U.S. Citizenship
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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2005**

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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:



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, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Mexico who on May 6, 1997, applied for asylum with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). The applicant failed to appear for two scheduled interviews and a Notice to Appear for a hearing before an Immigration Judge was issued on October 30, 1997. On January 26, 1998, the applicant failed to appear for a removal hearing and was subsequently ordered deported in absentia by an Immigration Judge pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1182 (a)(6)(A)(i) for having been present in the United States without being admitted or paroled. The applicant failed to surrender for removal or depart from the United States and a Warrant of Deportation (Form I-205) was issued on December 3, 1998. On August 26, 2003, at the Nogales, Arizona Port of Entry the applicant applied for admission into the United States with a border-crossing card. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for willfully misrepresenting a material fact in order to procure a visa for the United States. Consequently, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 travel to the United States as a nonimmigrant visitor.

The Director determined that the applicant is not eligible for any relief or benefit from his Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). The Director denied the Form I-212 accordingly. *See Director's Decision* dated October 18, 2004.

Section 212(a)(9)(A) 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.

. . . .

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

On appeal counsel submits a brief and documentation to show that the applicant has been living in Mexico since 1986. In his brief counsel states that the applicant never defrauded the United States and therefore he is admissible to the United States. Counsel states that although the applicant filed an Application for Asylum and Withholding of Deportation (Form I-589) he never resided in the United States and he thought that he

was signing documents in order to obtain permission to work. Counsel further states that the individual who filed the Form I-589 on the applicant's behalf, made numerous misrepresentations on the application. In addition counsel states that the applicant was not aware of his asylum interview date, his removal hearing date or his final removal order because he never lived in the United States and therefore he never received any documentation. Counsel states that although the applicant signed the Form I-589 he did not review it. Furthermore counsel states that the applicant did not commit fraud when he applied for his border-crossing card because he obtained a new border-crossing card when an American Consul automatically replaced his old card without conducting an interview. Finally counsel requests that the Form I-212 be granted because the applicant was never aware of his deportation and never made a misrepresentation or concealed a material fact when he applied for a border-crossing card.

The proceeding in the present case is limited to the issue of whether or not the applicant's inadmissibility under section 212(a)(9)(A)(i) of the Act, may be waived. The AAO does not have jurisdiction over and will not discuss the circumstances surrounding his removal, nor any other possible grounds of inadmissibility. The fact remains that the applicant was removed from the United States on August 26, 2003, and he is therefore inadmissible under section 212(a)(9)(A)(i) of the Act. That is the only issue that will be discussed.

The AAO finds that the Director erred in his decision stating that the applicant is not eligible for any relief or benefit from the application. As noted above the applicant is eligible for relief of his inadmissibility pursuant to section 212(a)(9)(A)(iii) of the Act and the applicant is not precluded from filing a Form I-212 at any time after removal.

The Director did not properly adjudicate the Form I-212 pursuant to section 212(a)(9)(A)(iii) of the Act. In view of the foregoing, the Director's decision will be withdrawn and the record will be remanded to him in order to properly adjudicate the Form I-212 under section 212(a)(9)(A)(iii) of the Act and enter a new decision, which, if adverse to the applicant is to be certified to the AAO.

ORDER: The Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.