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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4

JAN 13 2005

FILE:

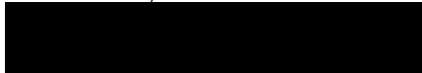


Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

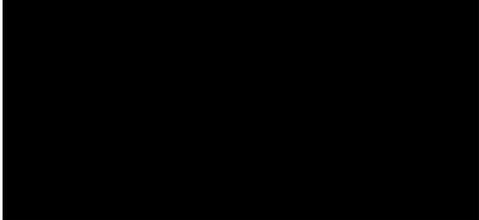
Applicant:



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:



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 appeal will be dismissed.

The applicant is a native and citizen of Mexico who on June 17, 1998, at the [REDACTED] port of entry, was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under this Act. 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) the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He now 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 and reside with his U.S. citizen spouse and child.

The Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated August 26, 2004.

On appeal, counsel states that the applicant should not be inadmissible under section 212(a)(6)(C)(ii) of the act because he resided in the United States prior to attaining the age of 16 and reasonably believed at the time of making the representation that he was a U.S. citizen. In addition counsel states that he will submit a brief and evidentiary documentation within 60 days of filing the appeal. The appeal was filed on September 16, 2004, and as of this date, more than 90 days later no additional documentation has been received by the AAO.

The AAO finds counsel's statement that the applicant believed he was a U.S. citizen unpersuasive. The record reflects that the applicant represented himself to be a citizen of the United States in order to gain admission into the United States at the [REDACTED] of Entry on June 17, 1998. In a sworn statement taken on June 17, 1998, after he represented himself to be a U.S. citizen, the applicant stated that he was a citizen of Mexico, his father was a Mexican citizen, his mother was a U.S. citizen, and that he tried to pass himself off as a U.S. citizen in order to enter the United States. There is no indication he believed he was a U.S. citizen. The applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

The record of proceedings clearly reflects that the applicant was removed from the United States on June 17, 1998 because he was found inadmissible under section 212(a)(6)(C)(ii) of the Act that provides in pertinent part, that:

(ii) FALSELY CLAIMING CITIZENSHIP-

(I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such

representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

There is no waiver available under this section of the Act, except for an individual who permanently resided in the United States prior to attaining the age of 16, both his parents are or were citizens of the United States and he reasonably believed he was a citizen at the time of making such representation. The applicant does not qualify for this exception since he stated that his father was a Mexican citizen and there is not indication that the applicant believed at the time of making a false representation that he was a citizen.

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.

Notwithstanding the arguments on appeal, the applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, which is very specific and applicable. 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. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.