



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 19 2006

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:

SELF-REPRESENTED

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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) 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 The Director's decision will be withdrawn, and the matter will be remanded to him for further action.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 Guatemala. In his decision, the Director states that on October 14, 1999, the applicant was ordered removed from the United States pursuant to section 241(a) of the Immigration and Nationality Act (the Act). According to the Director, the applicant reentered the United States on October 17, 1999, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. 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 remain in the United States and reside with his U.S. citizen spouse.

The Director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for a period of one year or more and is not eligible for any relief or benefit under the Act. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated April 27, 2005.

The proceedings in the present case are for an application for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(9)(B) of the Act. These proceedings are limited to the issue of whether or not the applicant meets the requirements to overcome the ground of inadmissibility under section 212(a)(9)(A)(i) of the Act.

On appeal, the applicant states that he was deported to Mexico on October 14, 1999, reentered on October 17, 1999, left the United States on October 24, 1999, returned on December 15, 2003, married a U.S. citizen on December 20, 2003 and signed a voluntary departure on October 14, 2005. In addition, the applicant states that he has the right to live with his spouse, and that living separately will cause a lot of problems. Additionally, the applicant states that he is a person of good moral character. The applicant submits copies of the same documentation he submitted with the filing of the Form I-212.

The AAO notes that the record of proceedings does not include a decision regarding the applicant's removal of October 14, 1999, and the only reference to the applicant's removal is on the Form I-212, in the Director's decision, in a Notice of Intent to Deny (NOID) and in the applicant's appeal. The NOID states: "records reflect that an Immigration Judge issued a final order of deportation and the applicant was removed from the United States". A thorough search of the electronic database of Citizenship and Immigration Services (CIS) does not reveal a deportation or removal order issued to the applicant.

The CIS Operation Instructions at 103.3(C) provides, in part, that the record of proceeding must contain all evidence used in making the decision. Without the complete record of proceeding and documentary evidence that the applicant was removed or deported from the United States, the AAO cannot make a decision on the appeal. As it currently stands, the record contains no documentation to indicate that the applicant was removed from the United States.

A search based on the applicant's name and date of birth reveals that Service file [REDACTED] may relate to the applicant. The Director shall review [REDACTED] and if it is determined to relate to the applicant, it shall be consolidated with [REDACTED]

If [REDACTED] does not relate to the applicant and/or the material contained in the file does not support the claim that the applicant was removed, the Director shall determine whether the applicant was ever removed and provide documentation to support that contention. If no evidence of removal is found, the Director shall withdraw his decision and declare the Form I-212 moot. If evidence of a removal is found, the entire record shall be returned to the AAO for adjudication of the appeal.

ORDER: The matter is remanded to the Director for further action consistent with the foregoing discussion.