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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2007

IN RE: [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:



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 Director, California Service Center denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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 February 5, 2000, applied for admission to the United States at the Nogales, Arizona Port of Entry. The applicant presented an I-586 Border Crossing Card bearing the name [REDACTED]. 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 having attempted to procure admission into the United States by fraud. Upon apprehension the applicant provided a fraudulent name to immigration inspectors. On February 6, 2000, 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), under the name [REDACTED].

On June 2, 2001, the Department of Labor (DOL) certified an Application for Alien Employment Certification (ETA-750) filed on the applicant's behalf by his employer. On April 17, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Worker (Form I-140) filed on his behalf by his employer. The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission on an unknown date prior to April 17, 2003, the date on which he filed the Form I-485. On November 4, 2005, the applicant filed the Form I-212. On May 9, 2006, the Form I-140 was approved. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 adjust his status to that of lawful permanent resident and to reside with his two U.S. citizen sons.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(6)(A)(i), 212(a)(9)(A)(i), 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(9)(A)(i), 1182(a)(9)(B)(i)(II) and 1182(a)(9)(C)(i)(II), for being present in the United States without inspection, seeking admission after having been removed from the United States, being unlawfully present for more than one year and seeking admission within ten years of his last departure and for entering the United States without being admitted after having been removed. The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated August 7, 2006.

On appeal, counsel contends that the applicant's son would face extreme and unusual hardship if the applicant was denied admission to the United States because he suffers from hypertropic cardiomyopathy and asthma. *See Counsel's Brief*, dated September 12, 2006. In support of his contentions, counsel submits the referenced brief, medical documentation for the applicant's son and an affidavit from the applicant. The entire record was reviewed in rendering a decision in this case.

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 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 on a 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.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on his attempt to gain entry into the United States by fraud in 2000.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The record indicates that the applicant does not have a U.S. citizen or lawful permanent resident spouse or parents. The record reflects that the applicant is married to [REDACTED] (Ms. [REDACTED] who is a native and citizen of Mexico. Ms. [REDACTED] is a dependent on the applicant's Form I-140. The Biographical Information Sheet (Form G-325) signed by the applicant indicates that both of his parents were born and reside in Mexico. A Sworn Statement in Proceedings Under Section 235(b)(1) of the Act (Form I-867A) indicates that the applicant's parents are natives and citizens of Mexico, and that neither of them have immigrated to the United States.

The AAO finds that the applicant has no qualifying family members on which to base a waiver request under section 212(i) of the Act. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and is statutorily ineligible for relief pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

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.

The applicant is subject to the provisions of section 212(a)(6)(C)(i) of the Act, which are very specific and applicable. The applicant is statutorily ineligible for a waiver of this ground of inadmissibility. 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. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

ORDER: The appeal is dismissed.