

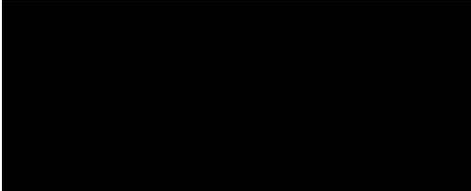
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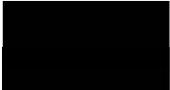
U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 29 2007

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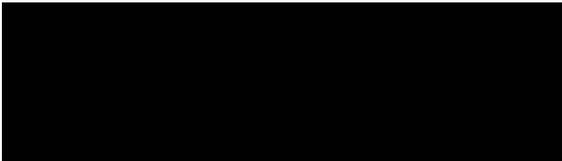
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Mexico who, on January 6, 2001, at the San Ysidro, California, Port of Entry, orally represented himself to be a citizen of the United States in order to gain admission into the United States. The applicant was found to be inadmissible 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 the Act, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Consequently, on January 7, 2001, 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 the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. The applicant is inadmissible pursuant to 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 travel to the United States and reside with his U.S. citizen spouse and children.

The Acting 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 Form I-212 accordingly. *See Acting Director's Decision* dated January 3, 2006.

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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel submits a brief in which she states that since more than five years have passed since the applicant was removed, he does not need a waiver application to be admissible to the United States. Counsel states that the applicant's period of exclusion has now ended and the Department of Homeland Security is prohibited from raising a bar under section 212(a)(6)(C)(ii) of the Act. Counsel further states that it is unfair to rely upon the record to establish specific reasons for deportability without considering the order given to

the alien. Finally, counsel states that the applicant had a pending Form I-130 filed by his lawful permanent resident mother and he would have contested the Service's determination had he been properly informed of the long-term repercussion on his admissibility.

Counsel refers to the Notice to Alien Ordered Removed/Departure Verification (Form I-296) which states that the applicant is prohibited from entering, attempting to enter, or being in the United States for a period of 5 years from the date of his departure from the United States. Form I-296 refers to the applicant's inadmissibility pursuant to section 212(a)(9)(A) of the Act and not to his inadmissibility pursuant to section 212(a)(6)(C)(ii) of the Act. The fact remains that the applicant represented himself to be a citizen of the United States in order to gain entry into the United States, and the fact that he may have had a Form I-130 filed on his behalf is irrelevant to the finding of his inadmissibility pursuant to section 212(a)(6)(C)(ii) of the Act. The proceeding in the present case is limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A)(i) of the Act to be waived. Inadmissibility under section 212(a)(6)(C)(ii) of the Act is not cured through the filing of a Form I-212.

To recapitulate, the applicant was expeditiously removed from the United States on January 7, 2001. The record of proceedings does not reflect that the applicant re-entered the United States after his removal. The applicant states that he resides in Mexico and there is no documentary evidence to show otherwise. It has now been more than five years since the applicant's date of removal. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

The AAO notes that although the applicant is not inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, he remains inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, for which no waiver is available.

ORDER: The appeal is dismissed and the application is declared unnecessary.