

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

tl4

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 31 2007

WAC 05 243 52279

IN RE:

[REDACTED]

PETITION: Application for Permission to Reapply for Admission into the United States After  
Deportation or Removal under sections 212(a)(9)(A)(iii) and (C)(ii), 8 U.S.C.  
§§ 1182(a)(9)(A)(iii) and (C)(ii)

ON BEHALF OF PETITIONER:

[REDACTED]

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 Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, the application will be referred to the immigration judge and the appeal will be dismissed as moot.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A), as a previously removed alien seeking admission to the United States within ten years (or within 20 years in the case of a second or subsequent removal) of his departure without the consent of the Attorney General (now Secretary of Homeland Security). The director also concluded that the applicant was inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), as a previously removed alien who enters or attempts to reenter the United States without being admitted. He denied the application accordingly. *Director's Decision*, dated October 18, 2005.

At the time that the director denied the Form I-212, the record indicates that the applicant was the subject of removal proceedings and was renewing her application for adjustment of status before the immigration judge. Although the applicant had been ordered removed on January 26, 2005, the Board of Immigration Appeals, on May 2, 2005, had granted a motion to reopen the proceeding and the applicant was scheduled for a January 18, 2006 hearing. In such circumstances, the regulation at 8 C.F.R. § 212.2(e) requires that the Form I-212 be adjudicated by the immigration judge:

(e) An applicant for adjustment of status under section 245 of the Act and part 245 of this chapter must request permission to reapply for entry in conjunction with his or her application for adjustment of status. This request is made by filing an application for permission to reapply, Form I-212, with the district director having jurisdiction over the place where the alien resides. If the application under section 245 of the Act has been initiated, renewed or is pending in a proceeding before an immigration judge, the district director must refer the Form I-212 to the immigration judge for adjudication.

As the director did not have jurisdiction over the Form I-212 filed by the applicant in the present case, his decision will be withdrawn. The Form I-212 shall be returned to the Los Angeles District Office for referral to the immigration judge before whom the applicant is appearing and the appeal in this matter will be dismissed as moot.

**ORDER:** The director's decision is withdrawn and the appeal is dismissed as moot. The Form I-212 is to be transferred to the immigration judge hearing the applicant's case.