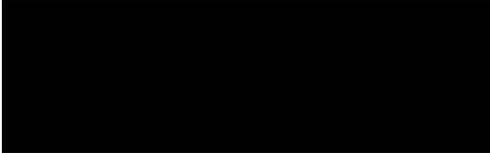




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**



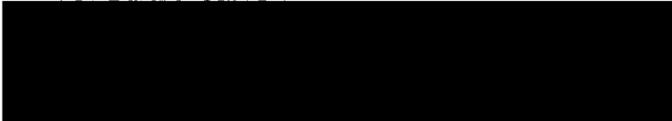
H4

FILE:  Office: VERMONT SERVICE CENTER Date: MAR 09 2007

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Acting Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the Acting Director and the AAO will be affirmed.

The applicant is a native and citizen of Mexico who entered the United States without a lawful admission or parole on or about February 5, 1990. On December 12, 1990, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On May 6, 1991, an Immigration Judge granted the applicant voluntary departure until June 1, 1991, in lieu of deportation. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on July 18, 1994, and he was permitted to depart from the United States voluntarily within 30 days from the date of the BIA's order. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to August 18, 1994, changed the voluntary departure order to an order of deportation. On November 16, 1994, a Warrant of Removal/Deportation (Form I-205) was issued. On October 5, 1998, the applicant was granted conditional resident status. On June 6, 2003, his lawful permanent resident status was rescinded. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 remain in the United States and reside with his U.S. citizen spouse and stepchild.

The Acting Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. See *Acting Director's Decision* dated April 21, 2004. The decision was affirmed by the AAO on appeal. See *AAO decision*, dated January 30, 2006.

On motion to reconsider, counsel alleges that the reviewing officer used subjective standards to deny the Form I-212, and disregarded the fact that there are more favorable factors than unfavorable factors. In addition, counsel states that the applicant did not receive a copy of the BIA's decision and was informed of his outstanding deportation order during his adjustment of status interview. Additionally, counsel states that the applicant's spouse would suffer extreme hardship and the applicant's family would suffer total disruption if the applicant's Form I-212 were not granted. Counsel further states that the applicant filed federal and state tax returns for the years 2000, 2001, 2002 and 2005. Finally, counsel alleges that the applicant has many more favorable than unfavorable factors in support of his Form I-212 that the reviewer failed to consider.

Although counsel states that the applicant never received a copy of the BIA's decision regarding his appeal, the record of proceeding reveals that a copy of the decision was forwarded to the applicant's attorney. Counsel failed to submit documentation to justify his assertion that the applicant did not receive a copy of the BIA's decision or that the applicant's previous attorney did not provide him with a copy of the decision. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel suggests that the fact that the applicant prepared and filed federal and state tax returns for four years should be considered a favorable factor. The AAO notes that the applicant was issued employment authorization cards and has been working in the United States since 1990. The fact that the applicant filed federal and state tax returns for four years out of the fifteen years that he resided in the United States cannot be considered a favorable factor.

The issues in this matter were thoroughly discussed by the Acting Director and the AAO in their prior decisions. The applicant in this case failed to establish by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the motion to reconsider will be granted and the prior Acting Director and AAO decisions will be affirmed.

**ORDER:** The motion to reconsider is granted and the prior Acting Director and AAO decisions are affirmed.