

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

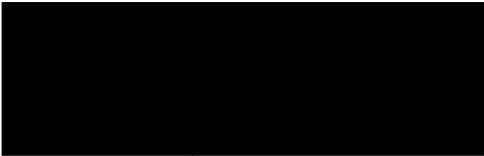
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

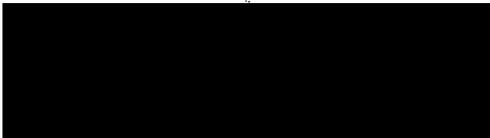


FILE: [Redacted] Office: SAN FRANCISCO, CALIFORNIA Date: MAY 03 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 District Director, San Francisco, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who attempted entry into the United States by presenting a photo-altered Mexican passport with a counterfeit Form I-551 stamp at San Ysidro, California on April 17, 1996. *Form I-485 Processing Sheet*. The applicant was placed into immigration proceedings and an immigration judge ordered him excluded and deported on April 23, 1996. *Decision of the immigration judge*, dated April 23, 1996. In June 1996, the applicant re-entered the United States without inspection. *Form I-485 Processing Sheet*. The applicant is inadmissible under 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 reside in the United States with his lawful permanent resident father.

The District Director found that the applicant attempted to use a false Form I-797 Approval Notice to demonstrate that he was eligible to adjust his status to lawful permanent resident. *Decision of the District Director*, dated April 8, 2004. The District Director further noted that the applicant was not eligible to adjust status, as no immigrant visa had ever been immediately available to him. *Id.* The District Director denied the Form I-212, finding that the applicant had no basis to submit the application as he was ineligible to apply for admission. *Id.*

On appeal, counsel stated that the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) erroneously concluded that the applicant was not eligible for adjustment of status. *Form I-290B; Attorney's brief*.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(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 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 of an aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

The record of proceedings reveals the Form I-797 provided by the applicant was published on August 3, 1990 while the Notice Date is April 23, 1990, several months before the publication of this version of the Form I-797. *See Form I-797, Notice of Action.* According to the District Director, the Department of State has no record that establishes that the applicant was ever assigned a priority date, nor is there any evidence confirming that the applicant qualifies as an alien accompanying or following to join an otherwise qualified alien. *Decision of the District Director*, dated April 8, 2004. The AAO finds that the District Director correctly found that the applicant attempted to use a false Form I-797 Approval Notice to demonstrate that he was eligible to adjust his status to lawful permanent resident. *Decision of the District Director*, dated April 8, 2004.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964) holds 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 record clearly demonstrates that the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act for the fraudulent documents he has submitted to establish himself as the beneficiary of an approved Form I-130 immigrant visa petition. As such, the record does not establish the applicant as an immigrant visa beneficiary. Section 212(i) of the Act limits the availability of a waiver to "an *immigrant* (emphasis added) who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence." As the applicant is not eligible for consideration of a waiver, he is mandatorily inadmissible to the United States. The AAO finds that no purpose would be served in granting the Form I-212 application.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.