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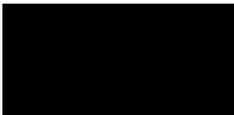


U.S. Citizenship
and Immigration
Services

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HL

FILE:



Office: CHICAGO, ILLINOIS
[consolidated therein]

Date:

FEB 06 2008

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) 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 Acting District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot and the previous decision of the Acting District Director will be withdrawn.

The record reflects that the applicant is a native and citizen of Guatemala who was initially found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), for having 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 seeking admission within 5 years of the date of such removal. The record indicates that on April 24, 1985, the applicant entered the United States without inspection. On April 29, 1985, an Order to Show Cause (OSC) was issued against the applicant. On May 28, 1985, an immigration judge ordered the applicant deported from the United States. On May 29, 1985, a Warrant of Deportation (Form I-205) was issued. On June 13, 1985, the applicant was deported from the United States. The applicant reentered the United States without inspection in February 1989. On November 12, 1997, the applicant received Authorization For Parole of an Alien into the United States (Form I-512). On December 11, 1997, the applicant reentered the United States on advance parole. On October 15, 2002, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), which the Interim District Director, Chicago, Illinois, approved on June 9, 2003. *Interim District Director Decision*, dated June 9, 2003. However, on July 5, 2006, the Acting District Director, Chicago, Illinois, revoked the applicant's Form I-212. *Acting District Director Decision*, dated July 5, 2006. The Acting District Director determined that the applicant was statutorily ineligible to file a Form I-212, based on his illegal reentry into the United States in February 1989, after being deported on June 13, 1985. The Acting District Director then found the applicant inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, for being deported from the United States and reentering without inspection.

On appeal, the applicant, through counsel, states that the Acting District Director "revoked [the applicant's Form I-212]...on the basis of legal authority that did not exist at the time that the I-212 waiver was adjudicated or at the time that [the applicant] reentered the U.S. Although the CIS properly granted the waiver in 2003 using its own regulations, it is now suggesting that a Board of Immigration Appeals ("Board") decision issued more than 3 years later should be the legal standard under which [the applicant's] waiver is considered." *Memorandum in Support of Appeal*, page 1, filed September 6, 2006. Counsel asserts that the applicant's illegal reentry in February 1989 does not make him inadmissible under section 212(a)(9)(C) of the Act. *Id.* at 2.

Section 212(a)(9)(C). Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's embarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

An Office of Programs Memorandum titled, Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Act, states that section 212(a)(9)(C)(i)(II) "applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997." See Memorandum by [REDACTED] Acting Executive Associate Commission, Office of Programs, dated March 31, 1997. The AAO notes that the applicant had a reentry into the United States after April 1, 1997; however, it was based on an advance parole, and was therefore a lawful entry and does not render the applicant inadmissible under section 212(a)(9)(C)(i)(II). The applicant's reentry in 1989 does not subject him to the provisions of section 212(a)(9)(C).

The AAO finds that the Acting District Director improperly revoked the applicant's Form I-212, as the applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The decision revoking the approval of the Form I-212 must be withdrawn. The Form I-212 is approved, so the appeal will be dismissed as moot and the decision of the Acting District Director will be withdrawn.

ORDER: The appeal is dismissed as moot and the prior decision of the Acting District Director revoking the Form I-212 is withdrawn. The Form I-212 is approved.