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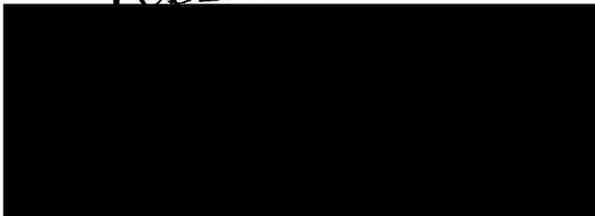
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



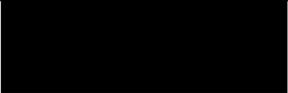
U.S. Citizenship
and Immigration
Services

HL4

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FILE:



[relates]

Office: VERMONT SERVICE CENTER

Date: FEB 07 2008

IN RE:

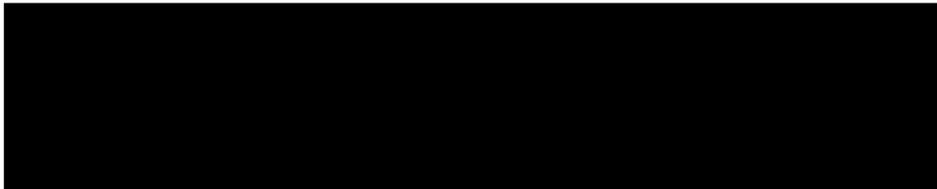
Applicant:



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.

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 after removal 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 as moot.

The applicant is a native and citizen of the Dominican Republic who attempted to enter the United States on September 16, 1997 by misrepresenting his true identity. On September 24, 1997, the applicant was expeditiously removed from the United States. The applicant was then 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). 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 with his United States citizen wife and children.

The Acting Director determined that the applicant is inadmissible pursuant to section 212(a) of the Act, 8 U.S.C. § 1182(a), for being ordered removed under section 240 or any other provision of law and that the unfavorable factors in the applicant's case outweighed the favorable factors.¹ The Acting Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Acting Director's Decision*, dated June 5, 2006.

The AAO notes that the Acting Director found the applicant had numerous unfavorable factors, including being apprehended working illegally in Puerto Rico in 2000, using numerous aliases, and marrying another United States citizen in 2001. However, after a thorough review of the applicant's record, and a comparison of photos of the applicant and the individual apprehended in Puerto Rico and who filed the other I-130 petition, it appears that there are two distinct individuals.

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

(A) Certain alien 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 5 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.

(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

¹ The AAO notes that the applicant was ordered removed under section 235 of the Act; therefore, the applicant was inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i).

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 five to ten 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.

A review of the record reflects that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant's wife states that since the applicant's deportation in September 1997, "he has stayed in the Dominican Republic and never again he [sic] has intended to enter in an illegal manner." *Affidavit from* [REDACTED] dated October 10, 2006. The applicant submitted numerous receipts and statements demonstrating that he has been residing in the Dominican Republic since at least January 1999. The AAO notes that there are numerous entry and exit stamps from traveling to the Dominican Republic in 2005 and 2006, in the applicant's son's passport. The AAO finds that the applicant has been residing in the Dominican Republic for more than the statutory five-year period. The applicant no longer needs permission to reapply for admission after his removal. However, when the applicant applies for a visa in the Dominican Republic, he will be interviewed by a consular officer. Once the consular officer makes a determination on the applicant's admissibility, and if the applicant is found to be inadmissible based on his misrepresentation, the applicant may then file a Form I-601 waiver application, if he chooses to do so.

ORDER: The appeal is dismissed as moot as the applicant is no longer 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).