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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H4

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JAN 11 2008

IN RE: [redacted]

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:

[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 District Director, Los Angeles, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who, on March 22, 1984, was placed into proceedings. On March 6, 1985, the immigration judge granted the applicant voluntary departure until May 7, 1985. On May 7, 1985, the applicant left the United States and returned to Mexico. On June 23, 2004, the applicant filed the Form I-212. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his naturalized U.S. citizen spouse and U.S. citizen children.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision* dated September 27, 2006.

On appeal, counsel contends that the applicant does not require permission to reapply for admission because he complied with the order of voluntary departure. *See Counsel's Brief,* dated October 20, 2006. In support of his contentions, counsel submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is not inadmissible under section 212(a)(9)(A) of the Act and he is, therefore, not required to receive permission to reapply for admission.

Section 212(a) of the Act states in pertinent part:

> (A) Certain aliens 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 five 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 who 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 on a alien 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

A Departure Verification Form (Form G-146) establishes that the applicant departed the United States and returned to Mexico on May 7, 1985, prior to the expiration of the grant of voluntary departure. Accordingly, the AAO finds that the applicant is not subject to a final order of removal, was not removed under an order of removal, and did not depart the United States under an order of removal. Therefore, he is not inadmissible pursuant to section 212(a)(9)(A) of the Act.

As there is no evidence in the record that the applicant is subject to a final order of removal or has ever been removed from the United States the applicant is not required to apply for permission to reapply for admission to the United States. Since the applicant does not require permission to reapply for admission, the decision of the district director will be withdrawn and the appeal will be dismissed as the application for permission to reapply for admission is moot.

The AAO notes that the record indicates that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), based on his 1984 oral false claim to U.S. citizenship in order to obtain entry into the United States. The Record of Deportable Alien (Form I-213) and Attachment to Application for Order to Show Cause and Bond/Custody Processing Sheet (Form I-265) indicate that, while the applicant had previously resided in the United States, he had last entered the United States on January 23, 1984 by making an oral false claim to U.S. citizenship. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant needs to file an Application for Waiver of Ground of Inadmissibility (Form I-601) at the time he applies for an immigrant visa or adjustment of status.

ORDER: The decision of the district director is withdrawn and the appeal is dismissed as the underlying application for permission to reapply for admission is moot.