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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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H#4

FILE:

Office: PHOENIX

Date:

**APR 08 2009**

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Phoenix, Arizona, 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 applicant is a native and citizen of Mexico who, on November 16, 1998, was placed into immigration proceedings after entering the United States without inspection in January 1997. On August 1, 2000, the immigration judge granted the applicant voluntary departure until November 29, 2000. On November 29, 2000, the applicant departed the United States and returned to Mexico.<sup>1</sup> On May 17, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. On June 1, 2004, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Phoenix, Arizona District Office. The applicant testified that he had reentered the United States without inspection on November 28, 2001.<sup>2</sup> On April 18, 2005, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On May 13, 2005, the applicant filed the Form I-212. Both applications indicated that the applicant continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 U.S. citizen spouse and children.

The district director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The district director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The district director denied the Form I-212 accordingly. *See District Director's Decision* dated December 12, 2005.

On appeal, counsel contends that the district director erred in denying the applicant's Form I-212 in light of the Ninth Circuit Court of Appeals (Ninth Circuit) decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004). *See Counsel's Brief*, dated February 7, 2006. In support of his contentions, counsel submits the referenced brief and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

The AAO has, in a separate decision, dismissed the applicant's appeal of the district director's denial of the Form I-601 filed by the applicant in relation to his inadmissibility for unlawful presence under section 212(a)(9)(B)(9)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). When an inadmissible alien

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<sup>1</sup> The record contains evidence submitted by the U.S. Consulate in Mexico verifying the applicant's departure on this date.

<sup>2</sup> The AAO notes that counsel contends that the applicant reentered the United States in November 2000 and submits receipts issued to [REDACTED] and an Autozone customer history printout to support his contention. The AAO notes that the receipt and the Autozone customer history is insufficient evidence to establish that the applicant was present in the United States on December 21, 2000, as is required by section 245(i) of the Act. Further, the AAO notes that whether the applicant is eligible for section 245(i) of the Act does not have bearing on the applicant's inadmissibility under section 212(a)(9)(C) of the Act.

files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual*, provides the following guidance:

Chapter 43 Consent to Reapply After Deportation or Removal

43.2 Adjudication Process:

(c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the AAO has found the applicant to be ineligible for permission to reapply for admission under section 212(a)(9)(C)(iii) of the Act and thus denied the applicant's Form I-601, no purpose would be served in further adjudication of the applicant's Form I-212. Accordingly, the appeal of the district director's denial of the Form I-212 will be dismissed.

**ORDER:** The appeal is dismissed.