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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: FRESNO, CA Date: APR 22 2009
RELATES)

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.

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).

hn F. Grissom,
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Fresno, 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 applicant is a native and citizen of Mexico who, on February 16, 1999, appeared at the Otay Mesa, California port of entry. The applicant presented a lawful permanent resident card bearing the name ." The applicant was placed into secondary inspections. The applicant admitted that he was not the true owner of the document and that he did not have valid documentation to enter the United States. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and for being an immigrant without valid documentation. On February 16, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On December 26, 2005, 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 December 26, 2005, the applicant filed 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 her behalf by her U.S. citizen spouse. On December 26, 2005, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) and the Form I-212, indicating that he resided in the United States. On April 10, 2006, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Fresno, California District Office. The applicant testified that he had reentered the United States without inspection in February 1999. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) 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 child.

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 June 9, 2006.

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 (9th Cir. 2004). *See Counsel's Brief,* dated July 12, 2006. In support of her contentions, counsel submits only the referenced brief. 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 fraud under section 212(a)(6)(C)(i) of the Act. When an inadmissible alien 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.