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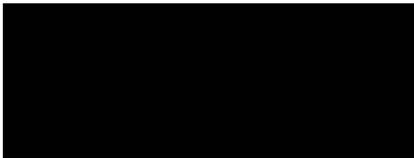
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN FRANCISCO, CA

Date:

AUG 10 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: Self-represented

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, as required by 8 C.F.R. 103.5(a)(1)(i).

hn F. Grissom

(Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, 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 record indicates that the applicant is represented by [REDACTED] and that he wishes to have all of his correspondence forwarded to his attorney's address; however, the record does not contain an executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to represent the applicant. Moreover, the State Bar of California's records reflect that Mr. [REDACTED] has been ineligible to practice law since November 16, 2001, and resigned on January 17, 2002. No representations have been made by counsel and the record reflects that the applicant filed the Form I-290B and supporting documentation. The Form I-290B was postmarked in the United States, reflecting that the applicant is in the United States. The applicant has provided us with no other way of contacting him; therefore, the decision will be forwarded to the applicant's last known address in the United States.

The applicant is a native and citizen of Mexico who, on April 12, 1999, was placed into immigration proceedings for having entered the United States without inspection in 1981. On January 22, 2003, the immigration judge denied the applicant's application for cancellation of removal and granted the applicant voluntary departure until March 24, 2003. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On December 31, 2003, the BIA dismissed the appeal and granted the applicant thirty days of voluntary departure. On January 9, 2004, the applicant filed a petition for review with the Ninth Circuit Court of Appeals (Ninth Circuit). On September 11, 2004, the applicant's adult U.S. citizen son filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on January 28, 2005. On September 2, 2005, the Ninth Circuit denied the applicant's petition for review.¹ On September 23, 2005, the applicant's period of voluntary departure expired. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On September 20, 2007, the applicant was removed from the United States and returned to Mexico, where he claims to have since resided.²

On September 5, 2007, the applicant filed a Form I-212, indicating that all correspondence should be forwarded to his attorney's address 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). He

¹ On appeal, the applicant contends that he did not receive the order of the Ninth Circuit; however, the record reflects that the decision was sent to the applicant's last known address and that, if the applicant had changed his address it was his responsibility to inform the court.

² The AAO notes that it appears that the applicant is residing in the United States despite his contention that he remains in Mexico. Since the applicant's removal, all correspondence from the applicant came in care of his attorney, even though the applicant was instructed to provide his personal address on the Form I-212 and the Form I-290B clearly reflects that it is filed by the applicant himself. The Form I-290B was postmarked in the United States. If the applicant is at any time able to overcome the below discussed grounds of inadmissibility and wishes to reapply for permission to reapply for admission, he will be required to provide evidence establishing that he has resided outside the United States since his removal in 2007. If it is later established that the applicant reentered the United States after his removal in 2007, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and he is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006) and *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9th Cir. 2007).

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 three adult U.S. citizen children.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated May 30, 2008.

On appeal, the applicant contends that the decision was erroneously denied. The applicant contends that he has always tried to do the right thing and follow the orders of the court. The applicant contends that the decision did not properly balance his equities and that his case was denied due process and fundamental fairness. *See Attachment to Form I-290B.*³ In support of his contentions, the applicant submits the referenced attachment and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) 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

³ The AAO notes that the Form I-290B indicates that the applicant is appealing the denials of both the applicant's Form I-212 and his spouse's [REDACTED] Form I-212. In order to appeal the denial of an application, an applicant must file a separate Form I-290B for each application denied. The record reflects that the applicant and his spouse failed to file a second Form I-290B in order to appeal the denial of the applicant's spouse's Form I-212 under [REDACTED]; however, the AAO finds that if the applicant's spouse had properly filed an appeal of the denial of her Form I-212, such an appeal would have been dismissed on the same basis as this office dismisses the applicant's appeal.

States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant accrued unlawful presence in the United States from April 1, 1997, the date on which unlawful presence provisions were enacted, and January 22, 2003, the date on which the applicant was granted voluntary departure. The applicant also accrued unlawful presence in the United States from September 23, 2005, the date on which his voluntary departure expired, and September 20, 2007, the date on which he was removed from the United States. The applicant, therefore, is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence and seeking admission within ten years of his last departure.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse or parent of the applicant.

The record indicates that the applicant does not have a U.S. citizen or lawful permanent resident spouse or parents. The record reflects that the applicant is currently married to a Mexican citizen. The record reflects that the applicant's parents are citizens of Mexico. The applicant has never made any claims that his parents or spouse are lawful permanent residents or U.S. citizens and a search of USCIS' electronic records indicates that there are no records for the applicant's spouse or parents.

The AAO finds that the applicant has no qualifying family members on which to base a waiver request under section 212(a)(9)(B)(v) of the Act. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and is statutorily ineligible for relief pursuant to section 212(a)(9)(B)(v) of the Act.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(9)(B)(i)(II) of the Act, which are very specific and applicable. The applicant is statutorily ineligible for a waiver of this ground of inadmissibility. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.