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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

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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: FRESNO, CA

Date: JUL 16 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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office 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 The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who, on March 30, 2007, filed an Application to Register Permanent Residence or Adjust Status (Form I-485), as a derivative of an approved Petition for Alien Relative (Form I-130) filed on the applicant's spouse's behalf. On the same day, the applicant filed the Form I-212 and an Application for Waiver of Grounds of Inadmissibility (Form I-601). On August 2, 2007, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Fresno, California Field Office. The applicant testified that, in March 1995, he attempted to enter the United States by presenting a lawful permanent resident card belonging to another. The applicant testified that he was denied admission to the United States and that he was returned to Mexico. On November 30, 2007, the Form I-601 was denied because the applicant does not have a qualifying relative in order to seek a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (i), for seeking entry into the United States by fraud. The field office director found the applicant to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been removed from the United States. He 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 two U.S. citizen children and his spouse.<sup>1</sup>

The field office director determined that the applicant was ineligible for a waiver under section 212(i) of the Act for his inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The field office director found that the applicant was otherwise mandatorily inadmissible and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated November 28, 2008.

On appeal, counsel contends that the director erred in denying the Form I-212 pursuant to section 212(a)(9)(C)(i), 8 U.S.C. § 1182(a)(9)(C)(i), for illegally entering the United States after having been removed.<sup>2</sup> Counsel contends that the field office director erroneously found that the applicant required a pending Form I-485 in order to seek permission to reapply for admission. Counsel contends that the applicant had previously withdrawn the Form I-212 because he did not think that he had been removed from the United States, and that even if the applicant had been deported the

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<sup>1</sup> The AAO notes that the applicant's spouse has not yet adjusted her status to that of lawful permanent resident. The applicant's spouse is eligible to become a lawful permanent resident as the married daughter of a U.S. citizen once a visa number becomes available. The applicant's spouse's priority date is January 13, 1994 and the most recent immigration bulletin reflects that visa numbers are only available to citizens of Mexico whose preference immigrant petitions were filed prior to July 1, 1991.

<sup>2</sup> The AAO finds that counsel is mistaken in her contention. The field office director's decision does not reflect that he denied that the applicant's Form I-212 because he had illegally reentered the United States after having been removed. The field office director denied the applicant's Form I-212 because he was otherwise mandatorily inadmissible under section 212 (a)(6)(C)(i) of the Act and ineligible to apply for a waiver. Denial of a Form I-212 based on such mandatory inadmissibility, is appropriate when an applicant is required to file for permission to reapply for admission to the United States.

removal had occurred more than twelve years ago.<sup>3</sup> *See Counsel's Brief*, dated December 18, 2008. In support of her contentions, counsel submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

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.

The record reflects that the field office director, in finding the applicant inadmissible under section 212(a)(9)(A)(ii) of the Act, based such a finding on the applicant's statement that he had been

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<sup>3</sup> The AAO finds that the record does not reflect that the applicant withdrew the Form I-212. The AAO finds that, if the applicant had been removed from the United States in March 1995, because the applicant reentered the United States and had failed to remain outside the United States for a period of ten years he would have been required to file a Form I-212. Simple passage of time since a removal does not dispose of an applicant's need to either file a Form I-212 or remain *outside* the United States for the required period of time. The AAO notes that counsel contends that the applicant's Form I-485 should not have been denied since the priority date for the underlying petition is not current; while the AAO does not have jurisdiction to review denial of a Form I-485, the AAO finds that denial a Form I-485 is appropriate when an applicant is not admissible to the United States because he is ineligible for a waiver under section 212(i) of the Act.

returned to Mexico. The record does not contain evidence that the applicant has ever been removed from the United States. Accordingly, the record does not establish that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant has ever been removed from the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the Field office director will be withdrawn and the application for permission to reapply for admission will be declared moot.

The AAO notes that the applicant will need to file a second Form I-601 after his wife becomes a lawful permanent resident along with his Form I-485, when he becomes eligible to file for adjustment of status.<sup>4</sup>

**ORDER:** The appeal is dismissed, the prior decision of the district director is withdrawn and the application for permission to reapply for admission is declared moot.

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<sup>4</sup> The AAO notes that the applicant will not be eligible to file for adjustment of status until two requirements have been met: (1) the applicant's spouse has become a lawful permanent resident and he is therefore eligible to seek a waiver under section 212(i) of the Act; and (2) a visa number has become available.