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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

44

[REDACTED]

FILE:

Office: CHICAGO, IL  
(RELATES)

Date:

**MAR 13 2009**

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)

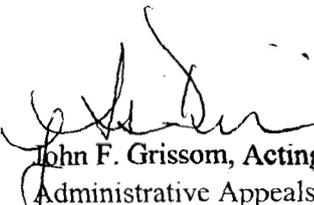
ON BEHALF OF APPLICANT:

[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).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Chicago, Illinois, 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 March 8, 1993, was placed into immigration proceedings after he had entered the United States without inspection. The applicant did not provide immigration officers with his true identity. On May 19, 1993, the applicant pled guilty to and was convicted of a conspiracy to knowingly and recklessly transport and harbor illegal aliens in furtherance of their unlawful entry into the United States in violation of 18 U.S.C. § 371 and 8 U.S.C. §§ 1324(a)(1)(B) and (C), under the name [REDACTED].” The applicant was sentenced to seven months in jail and 2 years of probation. On October 12, 1993, the immigration judge ordered the applicant removed from the United States under the name [REDACTED]. On the same day, the applicant was removed from the United States and returned to Mexico.

On November 10, 1995, the applicant married his U.S. citizen spouse, [REDACTED] in Mexico. On August 14, 1996, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The applicant indicated that he reentered the United States without inspection in December 1995. On August 15, 1996, the applicant filed the Form I-212. On September 3, 1996, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On June 22, 2004, the Form I-130 was approved. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) for seeking admission as an aggravated felon after being ordered removed. The applicant 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 adjust his status to that of lawful permanent resident and 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 ineligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years and denied the Form I-212 accordingly. *See District Director’s Decision*, dated June 2, 2004.

On appeal, counsel contends that the applicant may file for permission to reapply for admission from within the United States and warrants a favorable exercise of discretion.<sup>1</sup> *See Form I-290B*, dated

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<sup>1</sup> The AAO notes that counsel’s contention that the regulations permit an applicant to file for permission to reapply for admission from within the United States is persuasive when an applicant is found to be *only* inadmissible pursuant to section 212(a)(9)(A) of the Act. The AAO notes that, if an applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act, he or she must apply for permission to reapply for admission to the United States from outside the United States and only after he or she 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 (9<sup>th</sup> Cir. 2007). In reviewing the applicant’s case, the AAO finds that the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act because he reentered the United States prior to April 1, 1997, and has not left the United States since his December 1995 reentry. In order to be found inadmissible pursuant to section 212(a)(9)(C) of the Act, an applicant, while he or she may have

July 1, 2004. In support of his contentions, counsel submits only the referenced Form I-290B and a copy of a non-binding case decided by the Board of Immigration Appeals (BIA). The entire record was reviewed in rendering a decision in this case.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), provides, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission

....  
(6) Illegal Entrants and Immigration Violators

(E) Smugglers.-

- (i) In general.-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
- (ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d) of the Act, 8 U.S.C. § 1182(d), provides in pertinent part:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an

individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

In a separate proceeding, the AAO has found that the applicant is inadmissible pursuant to section 212(a)(6)(C)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). The AAO has also found that the applicant is ineligible for the exception in section 212(a)(6)(E)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(E)(ii), or the waiver under section 212(d) of the Act, 8 U.S.C. § 1182(d). *See AAO's Decision Form I-601*, enclosed.

*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)(6)(E) of the Act, which are very specific and applicable. In that the applicant does not qualify for the exception or waiver for this ground of inadmissibility, 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.