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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

FILE:

Office: EL PASO, TX

Date:

APR 08 2010

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, El Paso, Texas, 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 20, 1985, was convicted of vehicular homicide and no valid driver's license in violation of 46.61.520 and 46.20.021 of the Revised Code of Washington (RCW). The applicant was sentenced to 17.5 years in jail. On January 28, 1986, the applicant was placed into immigration proceedings for having entered the United States without inspection on April 27, 1985 and for having been convicted of an aggravated felony. On October 29, 1986, the immigration judge ordered the applicant removed from the United States. On October 30, 1986, the applicant was removed from the United States and returned to Mexico.

On March 11, 1988, the applicant filed a Form I-212 indicating that he resided in Mexico. On April 18, 1988, the Form I-212 was denied. The applicant filed a motion to reopen the Form I-212, which was denied on June 10, 1988.

On June 7, 1993, the applicant filed a Form I-212 indicating that he resided in the United States. On November 1, 1995, 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 lawful permanent resident spouse. The Form I-485 indicates that the applicant entered the United States without inspection in February 1992. The applicant reentered the United States on January 15, 1996 and June 13, 1997 utilizing an Advance Parole Document (Form I-512). On September 28, 1998, the Form I-485 was denied. On September 28, 1998, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of Act, 8 U.S.C. § 1231(a)(5). On September 28, 1998, the applicant was removed from the United States and returned to Mexico.

On August 4, 1999, the applicant filed a Form I-212 indicating that he resided in Mexico. On March 11, 2003, the Form I-212 was denied. On January 22, 2004, the applicant filed a Form I-212 indicating that he continued to reside in Mexico. The applicant is permanently 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 having been convicted of an aggravated felony. 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 lawful permanent resident spouse and four U.S. citizen children.

On June 2, 2009, the field office director determined that the applicant had been deported as an aggravated felon, he was not eligible for a waiver and he is permanently inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated June 2, 2009.

On appeal, the applicant's spouse contends that she will suffer extreme hardship if the applicant is not permitted to return to the United States. *See Declaration*, dated July 3, 2009. In support of her contentions, the applicant's spouse submits the referenced brief, copies of medical documentation and copies of psychological documentation. 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 of an 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 of Homeland Security] has consented to the alien's reapplying for admission. [Emphasis added]

....

(C) Aliens unlawfully present after previous immigration violations.-

- (i) In general.- Any alien who-
  - (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
  - (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.
- (ii) Exception.

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the [Secretary] has consented to the alien's reapplying for admission.

(iii) Waiver

The [Secretary], in the [Secretary's] discretion, may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

- (1) the alien's battering or subjection to extreme cruelty; and
- (2) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The AAO notes that the field office director indicates that the applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act. The record in this matter establishes that the applicant was removed from the United States on October 30, 1986 and September 28, 1998 and the Form I-485 indicates that he last returned to the United States without being admitted in February 1992. While the applicant reentered the United States in January 1996 and June 1997, those entries were made by utilizing an advance parole document. In order to be found inadmissible pursuant to section 212(a)(9)(C) of the Act, an applicant, while he or she may have been ordered removed prior to April 1, 1997, must have either entered or attempted to reenter the United States without being admitted on or after April 1, 1997, the effective date of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA). The evidence in the record does not establish that the applicant entered or attempted to reenter the United States without being admitted on or after April 1, 1997. Accordingly, the record does not establish that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C) of the Act; however, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

The record reflects that the applicant has remained outside the United States and lived in Mexico since September 28, 1998.<sup>1</sup>

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.<sup>2</sup>

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<sup>1</sup> The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after his 1998 departure, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). The applicant will be required to provide evidence to establish that he has been outside the United States since his removal.

While the field office director indicates that the applicant is not eligible for a waiver because he has been convicted of an aggravated felony, section 212(h) of the Act only permanently bars individuals who have been convicted of an aggravated felony after they have been admitted to the United States as a lawful permanent resident. The record does not reflect that the applicant had been admitted as a lawful permanent resident at the time of his conviction and the applicant is eligible to apply for a waiver under section 212(h) of the Act; however, because the applicant's crime is also a crime of violence, an exercise of favorable discretion in granting such a waiver would be subject to the applicant establishing a qualifying relative would suffer **exceptional or unusual hardship**, a standard much harder than extreme hardship. *See* 8 C.F.R. § 212.7(d). To seek a waiver under section 212(h) of the Act an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The record reflects that the applicant was convicted of "unlawfully and feloniously, while under the influence of intoxicating liquor or drugs, by operation of a vehicle in a reckless manner and with disregard for the safety of others, did drive a vehicle injure [victim] whose death was the proximate cause of that injury." The applicant's record of conviction reflects a conscious and intentional indifference to consequences, with knowledge that damage is likely to be done to a person, rendering the applicant's conviction a crime involving moral turpitude.