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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: SALT LAKE CITY, UT

Date:

AUG 24 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

[Redacted]

Chief, Administrative Appeals Office

at the time of the trial
the defendant was in the
custody of the police
and was not allowed to
see his family or friends
for a period of 14 days

DISCUSSION: The Field Office Director, Salt Lake City, Utah, 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 30, 2001, was apprehended by immigration officers and was returned to Mexico. On February 2, 2002, the applicant married his spouse in Mexico.¹ On September 19, 2002, the applicant was again apprehended by immigration officers and was returned to Mexico.

On August 30, 2004, the applicant's purported spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on October 1, 2004.² On February 3, 2006, the applicant appeared at the U.S. Consulate in Ciudad, Juarez, Mexico. The applicant testified that he had entered the United States without inspection in 1994 and remained in the United States until 1999. He testified that he subsequently reentered the United States without inspection in 2002 and returned to Mexico in 2004.

On June 12, 2006, the applicant filed the Form I-212 indicating that he resided in Mexico. On October 30, 2007, the applicant appeared at the Nogales, Arizona port of entry. The applicant presented a lawful permanent resident card bearing the name [REDACTED]. The applicant was placed into secondary inspection. The applicant admitted that he was not the true owner of the document and that he had previously resided and worked in the United States from 2002 until 2005. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud. On October 26, 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).

The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 remain in the United States and reside with his spouse, two U.S. citizen children and one Mexican-born child.

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 December 20, 2007.

Counsel contends that the field office director incorrectly found the applicant to be inadmissible for a period of twenty years.³ Counsel contends that the field office director erred in finding the applicant inadmissible under section 212(a)(9)(C) of the Act because he did not have a removal

¹ The AAO notes that the record contains conflicting evidence regarding the applicant's spouse. While the applicant and counsel claim that the applicant's spouse is a U.S. citizen, the information on the marriage certificate regarding the applicant's spouse's name, parents and place of birth conflicts with the same information on the U.S. birth certificate submitted to establish the applicant's spouse's U.S. citizenship.

² Again, the AAO notes the conflicting information in the record regarding the true identity of the applicant's spouse.

³ The AAO finds that the field office director incorrectly stated that the applicant is only inadmissible for a period of twenty years. As discussed below, the applicant is permanently inadmissible to the United States under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i).



order at the time of adjudication.⁴ Counsel contends that the field office director failed to adjudicate eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.⁵ *See Counsel's Brief*, dated July 16, 2009. In support of his contentions, counsel submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

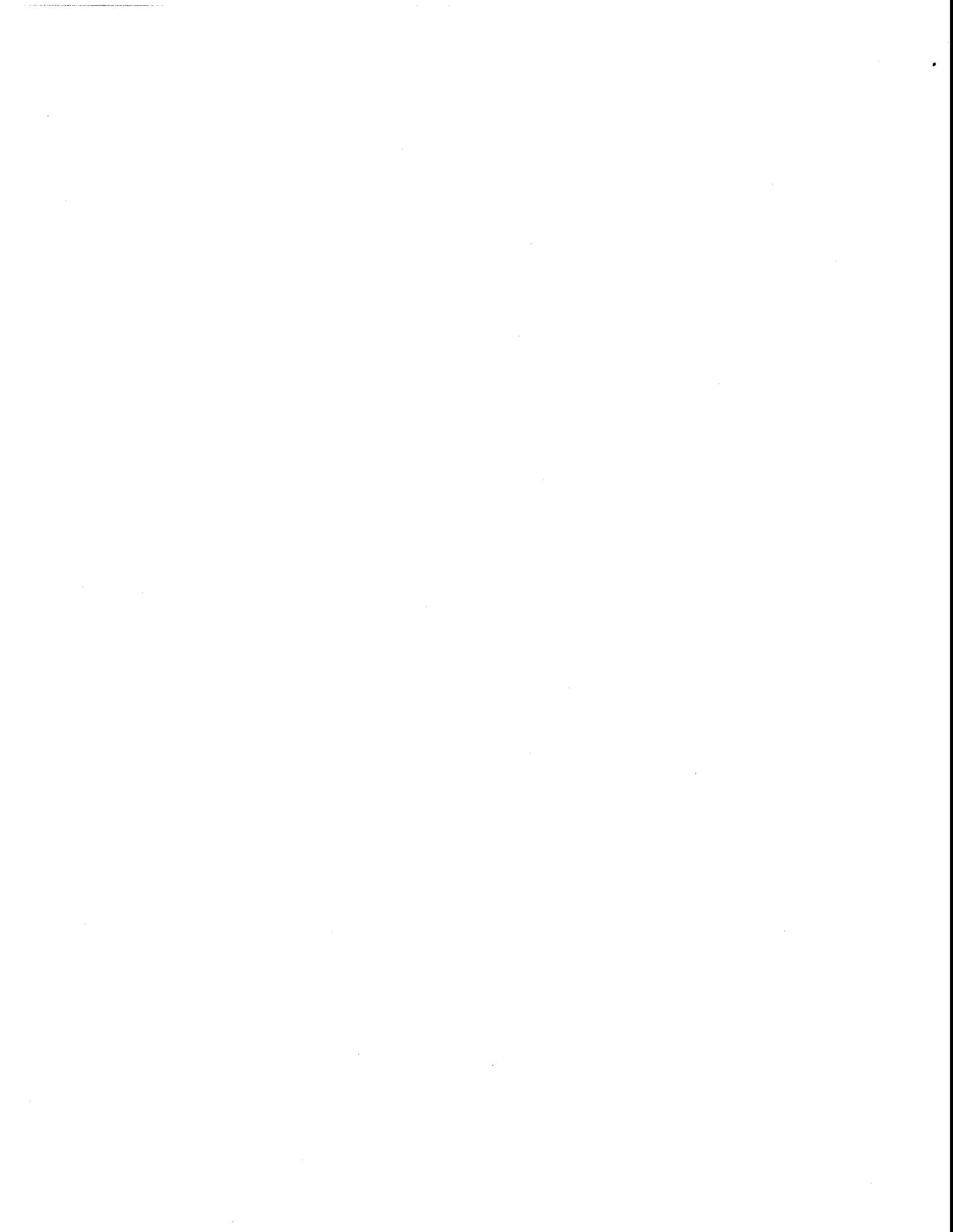
Section 212(a)(9) of the Act states in pertinent part:

(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.

⁴ Beyond the decision of the field office director, the AAO finds 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 accrued more than one year of unlawful presence. The record reflects that the applicant accrued unlawful presence from April 26, 1997, the date on which he turned eighteen, until 1999, the year in which he left the United States. The applicant subsequently reentered the United States without being admitted or paroled. Counsel's argument that the applicant did not accrue more than one year of unlawful presence because he was under the age of eighteen is illogical, since the applicant turned eighteen on April 26, 1997. The applicant is not eligible to apply for permission to reapply for admission because he has not remained outside the United States for the required ten years. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

⁵ The field office director was adjudicating an application for permission to reapply for admission and eligibility for a waiver under section 212(a)(9)(B)(v) of the Act was not before the field office director. See below in regard to failure to file a Form I-601.



- (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.

....

(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 of Homeland Security has consented to the alien's reapplying for admission.

- (iii) Waiver

The Secretary of Homeland Security 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—

- (I) the alien's battering or subjection to extreme cruelty; and

- (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The record reflects that the applicant and counsel claim that the applicant has remained outside the United States and lived in Mexico since 2004.⁶

⁶ While there is documentation submitted with the Form I-212 that appears to reflect that the applicant maintains an address in Mexico, this evidence is insufficient to establish the applicant's continued residence outside the United States. The applicant will be required to submit evidence establishing that he is currently outside the United States and has remained outside the United States for period of ten years when he becomes eligible to apply for permission to reapply for admission.



The AAO notes that the applicant is inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for attempting to enter the United States by fraud and for accruing more than one year of unlawful presence in the United States and seeking admission within ten years of his last departure. To seek a waiver of these grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).⁷

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.⁸ Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

⁷ While the record contains a copy of a completed Form I-601, the Form I-601 has not been properly filed since there was no fee accompanying the Form I-601. The AAO notes that the Form I-601 copy was filed with the Form I-212 and one filing fee. The Form I-601 requires a separate filing fee.

⁸ The AAO notes that, as discussed above, the applicant is ineligible for permission to reapply for admission and will not be eligible until at least October 30, 2017, ten years after the date of his last departure from the United States.

