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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: LOS ANGELES, CA Date: DEC 06 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 $630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, 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 is dismissed.

The applicant is a native and citizen of Mexico who, on July 8, 1984, appeared at the Calexico, California port of entry. The applicant presented a fraudulent U.S. Birth Certificate bearing the name [redacted] The applicant was placed into secondary inspection. The applicant admitted that the document was fraudulent and that he did not have valid documentation to enter the United States. The applicant admitted that he had been residing in the United States for the past ten years. On July 8, 1984, the applicant was returned to Mexico.

On July 9, 1984, the applicant appeared at the Calexico, California port of entry. The applicant made an oral false claim to U.S. citizenship by stating that he was born in Los Angeles, California. The applicant was placed into secondary inspection. The applicant admitted that he was not a U.S. citizen and that he did not have valid documentation to enter the United States. On July 9, 1984, the applicant was placed into immigration proceedings. On July 11, 1984, the applicant pled guilty to and was convicted of attempting to illegally enter the United States in violation of 8 U.S.C. § 1325. The applicant was sentenced to 60 days in jail. On September 12, 1984, the immigration judge ordered the applicant removed from the United States. On September 13, 1984, the applicant was removed from the United States and returned to Mexico.

On September 24, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on his behalf by his naturalized U.S. citizen spouse. On December 4, 2003, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On May 16, 2006, the Form I-601 was approved. On July 9, 2006, the applicant filed the Form I-212. On July 17, 2009, the Form I-601 was reopened and denied. On the same day, the Form I-485 was denied. In response to a request for further evidence the applicant testified that he last reentered the United States without inspection in 1985. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 naturalized U.S. citizen spouse and now lawful permanent resident father.

The field office 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 field office director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated July 17, 2009.

On appeal, counsel contends that it is impermissibly retroactive to apply *Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007), to the applicant's case when he relied on the Ninth Circuit Court

of Appeals (Ninth Circuit) decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004).[1] *See Counsel's Brief,* dated August 12, 2009. In support of his contentions, counsel submitted only the referenced brief. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In a separate proceeding, the field office director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and ineligible for a waiver pursuant to section 212(i) of the Act. *See Field Office Director's Decision on Form I-601,* July 17, 2009.[2] The applicant failed to timely file an appeal of or motion to reopen/reconsider the denial of the Form I-601.

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.

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[1] Counsel's contention is unpersuasive. In 2007, the Ninth Circuit Court of Appeals (Ninth Circuit) found that the Ninth Circuit should defer to the Board of Immigration Appeals' (BIA) decision in *Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006). *See Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007). Furthermore, retroactivity arguments before the Ninth Circuit in regard to *Gonzales II* mirror retroactivity arguments already dismissed by the Ninth Circuit in *Morales-Izquierdo v. Department of Homeland Security*, 2010 WL 1254137 (9th Cir. 2010).

[2] The AAO notes that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act because the applicant's false claims to U.S. citizenship were made prior to September 30, 1996; however, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act since he made the false claim to U.S. citizenship in connection with seeking admission to the United States.

In that the field office director has found the applicant to be ineligible for a waiver of inadmissibility under section 212(i) of the Act and the applicant failed to file a timely appeal or motion to reopen/reconsider, 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. Accordingly, the appeal of the field office director's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.