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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: PHOENIX, AZ

Date:

DEC 16 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:

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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by District Director, Phoenix, Arizona and 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 February 13, 1975 was deported to Mexico after being apprehended by border patrol agents in Oxnard, California. At that time the applicant identified himself as a U.S. citizen and presented the U.S. birth certificate of a [REDACTED]. The applicant also stated at that time that he entered the United States on January 20, 1975 by presenting the same U.S. birth certificate. The applicant was found to be inadmissible under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). He is seeking 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 lawful permanent resident spouse and children.

In a decision dated July 28, 2006, the district director found that the unfavorable factors in the applicant's case outweigh the favorable factors and denied the application accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated August 29, 2006, counsel states that the district director erred when he stated that the applicant failed to submit any documentation to support his claim, as the applicant is the father of four children who are either U.S. citizens or lawful permanent residents. Counsel also states that in judging the applicant's moral character the district director failed to consider the remoteness of the applicant's misrepresentation.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal. However, the AAO notes that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States by fraud and requires a waiver under section 212(i) of the Act. The record indicates that the applicant filed a waiver application on February 17, 2006, which was denied on March 2, 2006. The waiver application was not appealed.

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.

. . . .

(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.

....

(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....

The current record indicates that the applicant was deported from the United States on February 13, 1975. At that time he was barred from entering the United States for a period of five years, unless he received permission to reapply for admission. The record indicates that at some point after February 1975, the applicant re-entered the United States. The applicant states on his Application to Register Permanent Residence (Form I-485) that he last entered the United States in August 2000 by using a B2 visitor's visa, but failed to provide any evidence of this legal entry. Under section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he or she is eligible for the benefit sought. Thus, the AAO finds that as the applicant cannot provide evidence of his legal entry into the United States, his entry into the United States was without inspection, making him inadmissible under section 212(a)(9)(C) of the Act.

Under section 212(a)(9)(C)(ii) the applicant is required to apply for permission to reapply for admission. Permission to reapply for admission can only be granted if: (1) the applicant has left the United States, (2) the applicant is currently abroad, and (3) it has been ten years since the applicant's last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). As stated above, the record indicates that the applicant is not statutorily eligible to apply for consent to

reapply for admission because he is currently in the United States after entering without inspection and has not departed the United States since his re-entry or prior to filing his application. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.