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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: LAS VEGAS, NV

Date: **DEC 23 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)

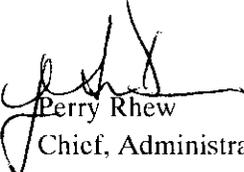
ON BEHALF OF APPLICANT:

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Las Vegas, Nevada, 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 23, 1995, appeared at the San Ysidro, California port of entry. The applicant made an oral false claim to U.S. citizenship by claiming to be born in San Diego, 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 November 24, 1995, the applicant was placed into immigration proceedings. On November 28, 1995, the immigration judge ordered the applicant removed from the United States. On November 28, 1995, the applicant was removed from the United States and returned to Mexico.

On July 23, 1999, 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. The Form I-485 indicates that the applicant entered the United States without inspection in December 1995. On May 4, 2001, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On March 20, 2002, the applicant filed the Form I-212, indicating that he continued to reside in the United States. On June 19, 2002, the Form I-130 and Form I-485 were denied. On March 12, 2009, the applicant filed a second Form I-485 based on a second Form I-130 filed on his behalf by his spouse. During an interview in regard to the Form I-485, the record reflects that the applicant reentered the United States utilizing an advance parole on September 13, 2000. On April 30, 2010, the Form I-485 and Form I-601 were denied. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 remain in the United States and reside with his naturalized U.S. citizen spouse and three U.S. citizen children.

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 from the United States. 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 April 30, 2010.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i) of the Act because he has not returned to Mexico since December 1995, effecting his reentry into the United States prior to April 1, 1997, the date on which section 212(a)(9)(C) was enacted. *See Counsel's Brief*, undated. In support of her contentions, counsel submits the referenced brief and copies of memorandum. 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*, April 30, 2010. The applicant failed to timely file an appeal of 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.

In that the field office director 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, 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.