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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

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FILE:

Office: LOS ANGELES, CA

Date:

JUN 25 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 \$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,

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 will be dismissed.

The applicant is a native and citizen of Mexico who, on January 29, 2000, appeared at the San Ysidro, California port of entry. The applicant presented a photo-substituted Mexican passport containing a photo-substituted U.S. nonimmigrant visa 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 no documentation to enter the United States. The applicant admitted that he knew it was illegal to attempt to enter the United States utilizing the document. The applicant admitted that he had previously resided in the United States for one year. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and for being an immigrant without documentation. On January 30, 2000, 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).

On November 26, 2006, 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 naturalized U.S. citizen spouse. The Form I-485 indicates that the applicant entered the United States without inspection in February 2000. On the same day, the applicant filed the Form I-212, indicating that he continued to reside in the United States. On June 5, 2007, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On June 5, 2009, the Form I-485 and Form I-601 were denied. 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 naturalized U.S. citizen spouse and three U.S. citizen children.¹

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 June 5, 2009.

Counsel contends that the applicant is eligible to seek adjustment of status under section 245(i) of the Act because he filed the waiver applications prior to reinstatement of the removal order.² *See*

¹ The AAO notes that the applicant previously concealed the existence of these children on the Form I-130, Form I-485 and Form I-212, as well as during the interview in regard to the Form I-485, and did not identify them until filing the Form I-601.

² The field office director did not err in finding the applicant ineligible to apply for adjustment of status pursuant to section 245(i) of the Act, even though the applicant had made the application prior to reinstatement. *See Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9th Cir. 2007) and *Morales-Izquierdo v. Department of Homeland Security*, 2010 WL 1254137 (9th Cir. 2010).

Form I-290B, dated June 29, 2009. In support of her contentions, counsel submits only the referenced *Form I-290B*. On the *Form I-290B*, counsel indicates that she will forward additional evidence and/or a brief within thirty days. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to *Form I-290B* require the affected party to submit the brief or evidence directly to the AAO, not to the Los Angeles, California field office or any other federal office. The record does not contain the brief and/or evidence that counsel indicated would be submitted to the AAO. Even if counsel were to submit evidence that a brief was filed with an office other than the AAO, the AAO would not consider the brief on appeal because counsel failed to follow the regulations or the instructions for the proper filing location. Accordingly the record is complete.

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*, June 5, 2009. The AAO subsequently dismissed 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 and the AAO have found the applicant to be ineligible for a waiver of inadmissibility under section 212(i) of the Act, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under

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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.