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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  
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Services

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FILE:

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**MAR 15 2010**

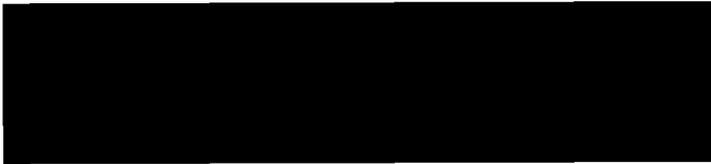
AND  
(RELATE)

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Chicago, Illinois, 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 May 25, 1956, was admitted to the United States as a lawful permanent resident. On December 19, 1966, the applicant was charged with grand theft auto. On September 1, 1966, the charge of grand theft auto was reduced to criminal trespass to property, to which the applicant pled guilty. The applicant was sentenced to supervision. On February 16, 1967, the applicant was charged with burglary. On February 17, 1967, the charge of burglary was reduced to a charge of theft, to which the applicant pled guilty. The applicant was sentenced to thirty days in jail. On April 6, 1969, the applicant was charged with robbery. On April 24, 1969, the charge of robbery was reduced to theft, to which the applicant pled guilty. The applicant was sentenced to ninety days in jail. On June 16, 1969, the applicant was placed into immigration proceedings as a lawful permanent resident who had been convicted of two crimes involving moral turpitude. On August 5, 1969, the Special Inquiry Officer (immigration judge) ordered the applicant removed from the United States. The applicant failed to depart the United States.

On October 10, 1969, the applicant filed a motion to reopen with the immigration judge to review the question of whether he was a derivative citizen through his father. On October 27, 1969, the immigration judge granted the motion to reopen for the sole purpose of reviewing this question. On June 19, 1970, the applicant filed an Application by a Lawful Permanent Resident Alien for Registration Receipt Card, Form I-151 (Form I-90).<sup>1</sup> On June 30, 1970, the Form I-90 was denied. On October 21, 1971, the applicant was charged with battery. On March 16, 1972, the charge of battery was reduced to disorderly conduct, to which the applicant pled guilty. The applicant was sentenced to supervision and a fine. On May 20, 1972, the applicant married [REDACTED], a naturalized U.S. citizen, in Chicago, Illinois. The applicant subsequently requested voluntary departure in view of removal. On May 13, 1974, the immigration judge denied the applicant's request for voluntary departure and ordered him removed from the United States. On May 23, 1974, the applicant filed a Form I-212. On June 19, 1974, a warrant for the applicant's removal was issued. On June 24, 1975, the applicant was removed from the United States and returned to Mexico.

On April 23, 1975, the applicant's Form I-212 was denied. The applicant reentered the United States without inspection on an unknown date, but prior to July 6, 1978, the date on which he was arrested for forcible rape. The forcible rape charge was eventually stricken on leave. On October 7, 1983, the applicant filed a second Form I-212. On November 29, 1983, the applicant's Form I-212 was denied.

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<sup>1</sup> The AAO notes that the applicant committed fraud by filing the Form I-90, by indicating that he was entitled to documentation as a lawful permanent resident when he was stripped of his lawful permanent resident status at the time he was ordered removed. The subsequent motion to reopen was specifically limited to the question of whether the applicant was a derivative citizen through his father and did not reinstate the applicant's prior lawful permanent resident status. As such, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain immigration benefits by fraud. An applicant may seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), by filing an Application for Waiver of Ground of Inadmissibility (Form I-601).

The applicant filed an appeal with the Associate Commissioner for Examinations (AAO). On June 25, 1984, the Regional Commissioner dismissed the applicant's appeal.

On March 20, 1995, 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 spouse. During the interview in regard to the Form I-485, the applicant failed to reveal his prior arrests and convictions.

On May 12, 1999, the applicant filed a second Form I-485. On the same day, the applicant filed an Application for a Waiver of Grounds of Inadmissibility (Form I-601) and a third Form I-212, indicating that he continued to reside in the United States. During an interview in regard to the Form I-485, the applicant admitted that he had reentered the United States immediately after having been removed. On October 17, 2007, the Form I-485 and the Form I-601 were denied. The applicant is inadmissible pursuant to 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 reside in the United States with his U.S. citizen spouse, U.S. citizen mother, three U.S. citizen children and two U.S. citizen siblings.

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), and is not eligible to apply for permission to reapply for admission. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated October 17, 2007.

On appeal, counsel contends that the applicant is eligible for *nunc pro tunc* approval of permission to reapply for admission as provided for in the regulations. Counsel contends that the applicant is not inadmissible under section 212(a)(9)(C) of the Act because it would be impermissibly retroactive to apply section 212(a)(9)(C) of the Act to the applicant's case because he filed an application for adjustment of status on March 20, 1995, prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (IIRIRA). *See Counsel's Brief*, undated. In support of his contentions, counsel submits the referenced brief and copies of documentation evidencing the filing of the applicant's application for adjustment of status. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —
  - (A) Conviction of certain crimes. —
    - (i) In general. — Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —
      - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –

....

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

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, Chicago, Illinois found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and ineligible for a waiver pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).<sup>2</sup> See *Field Office Director's Decision on Form I-601*, October 17, 2004. The applicant failed to timely file an appeal of the denial of the Form I-601.<sup>3</sup>

*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(h) 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.

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<sup>2</sup> Beyond the decision of the field office director, the AAO finds the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to obtain immigration benefits by fraud and requires a waiver pursuant to section 212(i) of the Act.

<sup>3</sup> While counsel, on the Form I-290B, asserts that he is appealing the denials of the Form I-212, Form I-601 and the Form I-485, the applicant has filed only one Form I-290B. In order to seek an appeal of a denial of an application, the applicant must file a Form I-290B for each application/petition from which he or she seeks an appeal/motion to reopen or reconsider. As such, the applicant has only filed one timely appeal.