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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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[REDACTED]

FILE:

[REDACTED]

Office: HARLINGEN, TX
(RELATES)

Date:

MAY 18 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 \$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 Acting Field Office Director, Harlingen, Texas, 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 March 11, 1987, was placed into immigration proceedings for having entered the United States without inspection on December 7, 1986. On April 23, 1987, the applicant pled guilty to and was convicted of misprision of a felony: conspiracy to import a quantity of heroin in violation of 18 U.S.C. § 4. The applicant was sentenced to three years in jail, which was suspended in favor of 179 days in jail and five years of probation. On December 16, 1987, the immigration judge ordered the applicant removed from the United States *in absentia*. On April 30, 1988, a warrant for the applicant's removal was issued.

On November 1, 2002, 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 U.S. citizen son. The Form I-485 indicates that the applicant entered the United States in October 2002 as a visitor.¹ On March 18, 2004, the Form I-130 was approved. On April 19, 2004, the Form I-485 was denied. On August 9, 2004, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant filed a motion to reopen the Form I-485, which was denied on August 27, 2004. On December 23, 2004, the applicant filed a Form I-212 indicating that he continued to reside in the United States. The applicant filed a second motion to reopen the Form I-485. On June 13, 2009, the Form I-601 was denied. On June 15, 2009, the motion to reopen the Form I-485 was denied. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant requests 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 adult children and lawful permanent resident spouse.

The acting field office director determined that the applicant was inadmissible under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), and that there was no waiver available to the applicant. The acting field office director determined that no purpose would be served in approving the application and denied the Form I-212 accordingly. *See Acting Field Office Director's Decision* dated June 13, 2009.

On appeal, counsel contends that the applicant departed the United States before the immigration judge issued the removal order and did not return to the United States until approximately fifteen years later. Counsel contends that the applicant is, therefore, not inadmissible under section 212(a)(9)(A) of the Act and should have been notified that he is not required to apply for permission to reapply for admission. *See Form I-290B*, dated July 16, 2009. On the Form I-290B, counsel indicates that he 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 the Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the Harlingen, Texas 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

¹ The AAO notes that the record contains evidence that the applicant was issued a border crossing card in 2002.

failed to follow the regulations or the instructions for the proper filing location. Accordingly the record is complete.

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.
- (ii) Other aliens.- Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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 of Homeland Security] has consented to the alien's reapplying for admission.

While counsel contends that the applicant has remained outside the United States for a period of fifteen years and is no longer inadmissible pursuant to section 212(a)(9)(A) of the Act, there is no evidence in the record to support the date on which the applicant departed the United States or to support that he remained outside the United States for the claimed period of time. The only evidence in the record is documentation reflecting the applicant's presence in the United States since October 2002. The evidence is, therefore, insufficient to establish the applicant's compliance with the statutorily required presence outside the United States.

Section 212(a)(2)(C) provides:

CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe--

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so

....
is inadmissible

The AAO also finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, because his conviction for misprision of a felony: conspiracy to import a quantity of heroin, gives us reason to believe that the applicant has been involved in the illicit trafficking of a controlled substance. No waiver is available to individuals found inadmissible under section 212(a)(2)(C) of the Act.

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 statutorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(2)(C) of the Act, which are very specific and applicable. No waiver is available for an alien who is a trafficker in any controlled substance. Therefore, 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. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.