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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: DEC 07 2011

OFFICE: SAN BERNARDINO, CALIFORNIA

FILE:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

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, San Bernardino, 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 record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed under section 235(b)(1) of the Act and reentering the United States without being admitted. The applicant through counsel does not contest this finding of inadmissibility. Rather, he seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to reside in the United States with his United States citizen children and United States citizen siblings.

The Field Office Director determined that the applicant failed to meet the eligibility requirements for consent to reapply for admission and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated April 27, 2011.

On appeal, counsel asserts that the evidence and documentation submitted in support of the appeal meets the preponderance of the evidence standard required to support the applicant's claim for adjustment of status and credibly shows his entitlement to relief; that the applicant desires to clarify the record in support of his claim; and that due process requires the applicant to be given an opportunity to provide a further explanation, testimony, and evidence in support of his claim. Notice of Appeal or Motion (Form I-290B), dated May 23, 2011.

The record includes, but is not limited to: counsel's brief and correspondence; letters of support from the applicant's family members, friends, and church; a psychological evaluation of the applicant's sister; identity documents; employment documents; photographs; and a criminal history letter. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(C) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

...

(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 of Homeland Security has consented to the alien's reapplying for admission.

The record reflects that the applicant attempted to enter the United States on or about March 22, 1999, by presenting a Resident Alien Card (I-551) to U.S. immigration officials located at the port of entry in San Ysidro, San Diego, California. The I-551 did not belong to the applicant; rather, it identified the owner as [REDACTED]. Accordingly, the applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i), and then expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) on or about March 23, 1999. The record also reflects that the applicant entered the United States in or around August 1999 without inspection by U.S. immigration officials, and has remained in the United States to date. Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act and is statutorily ineligible to apply for permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act.

To avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least 10 years ago, the applicant has remained outside the United States during that time, and USCIS has consented to the applicant's reapplying for admission. *Matter of Briones*, 24 I&N Dec. at 358, 371; *Matter of Torres-Garcia*, 23 I&N Dec. at 873, *aff'd.*, *Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). In the present matter, the applicant has not left the United States since being expeditiously removed and reentering the United States without inspection by U.S. immigration officials in or around 1999. As the applicant has not been outside the United States for a total of 10 years, he is currently statutorily ineligible to apply for permission to reapply for admission, and is therefore, inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish that he is eligible for the benefit being sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.