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

U.S. Citizenship and Immigration Services

#4

[redacted]

Date: DEC 30 2011 Office: LOS ANGELES, CA FILE: [redacted]

IN RE: Applicant: [redacted]

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

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 $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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. Specifically, the record shows, and the applicant concedes, that he entered the United States on March 11, 1993, using an alien registration card bearing the name of [redacted] *Record of Sworn Statement*, dated March 11, 1993. The record shows the applicant was deported from the United States on March 18, 1993. *Record of Exclusion and Deportation (Form I-296)*, dated March 18, 1993. According to the applicant's Form I-212, he has resided in the United States since October 1986. *See also Application for Waiver of Ground of Inadmissibility (Form I-601)*, dated June 14, 2004 (stating the applicant resides in California and has primarily resided in California since 1985); *Biographic Information form (Form G-325A)*, dated April 4, 2001 (stating the applicant has resided in the United States since July of 1995). The applicant is married to a U.S. citizen and seeks permission to reenter the United States in order to reside with his wife and children.

The field office director found that the applicant's hardship does not rise to the level required for a waiver of inadmissibility and denied the application accordingly. *Decision of the Field Office Director*, dated July 20, 2009.

On appeal, counsel contends that the field office director failed to consider all of the evidence of hardship cumulatively.

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

. . . .

(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 . . . 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 Attorney General has consented to the alien's reapplying for admission.

After a careful *de novo* review of the record, the AAO notes that, in a separate decision, the field office director denied the applicant's Application for Waiver of Ground of Excludability (Form I-601), which the applicant filed in relation to her inadmissibility for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). *Decision of the Field Office Director*, dated March 19, 2009. There is no evidence in the record that the applicant has appealed that decision.

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 that no purpose would be served in granting the application. In this case, the applicant is subject to the provisions of section 212(a)(6)(C)(i) of the Act and was denied a waiver under section 212(i) of the Act. There is no indication the applicant has appealed that decision. 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. In that the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the field office director.

In proceedings for an application for admission, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.