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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**

H4

[REDACTED]

DATE: **APR 18 2012** Office: SAN DIEGO, CALIFORNIA [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:

SELF-REPRESENTED

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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, San Diego, California, and 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 inadmissible for having been removed from the United States on January 4, 2010. The record indicates that the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), as an alien previously removed. The applicant 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).

The district director determined that the applicant's negative factors outweigh his positive factors and denied the Form I-212 accordingly; and the district director noted that the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act when he was ordered removed. *Decision of the District Director*, dated June 21, 2010.

On appeal, the applicant states he needs to support his family financially and emotionally; he is a responsible and honest man; he has a Form I-130 pending; and he has worked hard to abide by all codes of civil conduct. *Form I-290B*, received July 13, 2010.

The record includes, but is not limited to, the Form I-290B and an I-130 receipt notice. The entire record was reviewed and considered in rendering a decision on the appeal.

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 has consented to the alien's reapplying for admission.

The record establishes that the applicant presented a fraudulent I-551 stamp in an attempt to procure admission to the United States on January 3, 2010. The applicant was issued an order of expedited removal, he was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act in his removal order and he was removed on January 4, 2010. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(i) of the Act for having been ordered removed under section 235(b)(1), and he requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The AAO finds that based on the applicant's misrepresentation, he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and he is required to file a waiver under section 212(i) of the Act using Form I-601, Application for Waiver of Grounds of Inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

Section 212(i) of the Act provides that:

- (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.

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.

As the applicant is inadmissible under section 212(a)(6)(C)(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 section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the district director.

The applicant may file another Form I-212 when he files a benefits application in conjunction with such consent to reapply for admission and a waiver of inadmissibility pursuant to section 212(i) of the Act. Further, the applicant should file the Form I-212 and Form I-601 with the consulate with jurisdiction over the applicant's residence.

The AAO also notes that the applicant does not have a qualifying relative as required for a waiver under section 212(i) of the Act. Therefore, at this time, he would not be eligible for a waiver using Form I-601. In addition, the record reflects that the Form I-130, Petition for Alien Relative, in which he is the beneficiary, was denied on August 10, 2010. He would require an approved Form I-130 before he could file Form I-601, Form I-212 and an immigration visa application.

ORDER: The appeal is dismissed.