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



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

H4

DATE:

OFFICE: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE:

FEB 16 2012

[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 \$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,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

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 Field Office Director, San Francisco, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action consistent with this decision.

The record reflects the applicant is a native and citizen of Mexico who attempted to gain admission into the U.S. with a counterfeit lawful permanent resident document in February 1996. The applicant was ordered excluded and deported from the U.S. on this basis on February 22, 1996. The applicant subsequently entered the U.S. without admission on or around March 1, 1996. He has remained in the United States since that time. The applicant was found to be inadmissible pursuant to sections 212(a)(9)(A)(ii)(I) and 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A)(ii)(I) and 1182(a)(9)(C)(i)(II). He seeks permission to reapply for admission into the United States after removal, under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

In a decision dated July 31, 2009, the director determined that the applicant was statutorily barred from requesting permission to reapply for admission under section 212(a)(9)(C)(i)(II) of the Act, because he had not been outside of the U.S. for at least ten years since his last departure from the U.S. The Form I-212 was denied accordingly.

Through counsel, the applicant contests that he is statutorily barred from obtaining Form I-212 permission to reapply for admission. Counsel indicates that regulatory, administrative and federal court authority allow the applicant to seek permission to reapply for admission without being outside of the country for ten years, because his removal and subsequent reentry into the U.S. occurred prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA", Pub. Law 104-208, Sept. 30, 1996, 110 Stat. 3009-546). Counsel requests that the applicant's Form I-212 be reconsidered and adjudicated on its merits.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

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

The provisions contained in section 212(a)(9)(C) of the Act do not apply to reentries made prior to the section's April 1, 1997 effective date.

Section 212(a)(9)(C)(i)(II) of the Act applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997.

See Memorandum by [REDACTED], Acting Executive Associate Commissioner, Office of Programs, dated June 17, 1997.

In the present matter, the record reflects that both the applicant's removal and subsequent unlawful reentry into the U.S. occurred in 1996, before the April 1, 1997 effective date of IIRIRA. Accordingly, the applicant is not barred under section 212(a)(9)(C) of the Act from seeking Form I-212, permission to reapply for readmission from within the United States.¹

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

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.

¹ It is additionally noted that prior to IIRIRA, 8 CFR § 212.2(e) allowed aliens to seek permission to reapply for admission while in the U.S. when the I-212 was filed in conjunction with an adjustment application.

(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 reflects that the applicant was ordered excluded and deported from the U.S. on February 22, 1996, and that he subsequently entered the U.S. without admission on or around March 1, 1996. The applicant is therefore inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act and he requires Form I-212 permission to reapply for admission into the United States, as set forth in section 212(a)(9)(A)(iii) of the Act.

In the present case, the director erroneously denied the applicant's Form I-212 based on a finding that he was statutorily barred from seeking permission to reapply for admission. Because the director did not issue a decision on the merits of the applicant's Form I-212 application, the case will be remanded to the director for issuance of a new decision. If the director's decision is adverse to the applicant, the decision shall be certified to the AAO for review in accordance with the requirements found at 8 C.F.R. § 103.4.

ORDER: The case is remanded to the director for further action consistent with this decision.