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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

Date: JAN 04 2012

Office: LOS ANGELES

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)(A)(iii) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

Thank you,



Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, 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 matter will be remanded for further action consistent with this decision.

The record reflects the applicant, a native and citizen of Mexico, entered the United States without inspection in May 1997. On July 19, 2000, the applicant was placed in removal proceedings, and was subsequently ordered removed, in absentia, on March 15, 2001. However, there is no indication in the record that the applicant departed the United States after being ordered removed.

On November 22, 2006, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, together with Form I-130, Petition for Alien Relative, filed by the applicant's U.S. Citizen son. On April 24, 2007, in response to the Form I-485 application, the Field Office Director, Indianapolis, Indiana, provided the applicant with a Notice of Proper Filing Procedure. As the applicant was under a previously-issued removal order, the field office director determined that U.S. Citizenship and Immigration Services did not have jurisdiction over the Form I-485 application and she should file a motion to reopen with the immigration court if she wished to apply for adjustment of status. *See Decision of the Field Office Director*, dated April 24, 2007.

On June 14, 2009, the applicant filed Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. On October 21, 2009, the Field Office Director, Los Angeles, California, denied the applicant's Form I-212 application under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I). *See Decision of the Field Office Director*, dated October 21, 2009.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) provides, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations

(i) In general

Any alien who—

- (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
- (II) has been ordered removed under section 1225 (b)(1) of this title, section 1229a of this title, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

The field office director's decision states that the applicant "entered, or attempted to enter, the United States sometime after March 15, 2001...." See *Decision of the Field Office Director*, dated October 21, 2009. The applicant was ordered removed on March 15, 2001 and was issued a Form I-166 on August 13, 2001 ordering her to report for deportation on September 6, 2001. The record indicates that she failed to appeal for deportation on that date, and there is no evidence in the record to indicate that the applicant departed the United States at this or any other time.<sup>1</sup> On the Form I-485, which the applicant filed on November 22, 2006, the applicant listed her date of last arrival as 1997. Based on the record it appears that the applicant entered the United States in May 1997 and has remained in the United States since that date. There is no indication on the record that the applicant departed the United States and reentered, or attempted to reenter, the United States since the removal order was issued on March 15, 2001, and, if so, the applicant cannot be found inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I).

As the applicant was previously ordered removed by the immigration judge on March 15, 2001, the applicant is ineligible to adjust her status in the United States pursuant to an application filed with the U.S. Citizenship and Immigration Services, as the immigration judge would have jurisdiction over her application. See *Decision of the Field Office Director*, dated April 24, 2007. Should the applicant depart the United States and wish to pursue an immigrant visa at a U.S. Consulate abroad, under Section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) the applicant will require the consent of the Secretary of the Department of Homeland Security to reapply for admission.<sup>2</sup> Under 8 C.F.R. § 212.2(j), the applicant is entitled to seek conditional approval of an application for permission to reapply for admission prior to departure by submitting a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

Because the record is inconclusive concerning whether the applicant actually departed the United States after having been ordered removed, the matter will be remanded to the field office to determine whether the applicant departed and subsequently entered, or attempted to enter, the United States sometime after March 15, 2001. If the applicant did not depart the United States, the field office shall adjudicate the Form I-212 in accordance with 8 C.F.R. § 212.2(j).

**ORDER:** The matter is remanded to the field office director to determine whether the applicant entered, or attempted to enter, the United States after March 15, 2001, and, if not, to adjudicate the Form I-212, Application for Permission to Reapply for Admission.

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<sup>1</sup> The applicant was subsequently issued a second Form I-166 on April 24, 2007 to report for removal on May 24, 2007, but again, there is no evidence in the record that the applicant departed the United States after being served with this document.

<sup>2</sup> The AAO notes that as the applicant was ordered removed in absentia on March 15, 2001, the applicant may also be found inadmissible under Section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failure to attend a removal proceeding.