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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**



HL4



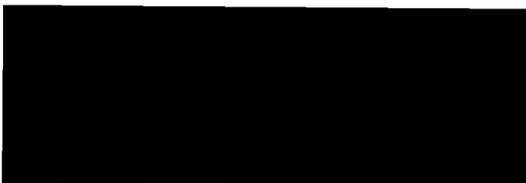
DATE: OFFICE: SAN DIEGO, CA

FILE: 

IN RE: JAN 06 2012 APPLICANT: 

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

ON BEHALF OF APPLICANT:

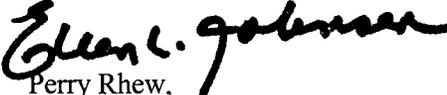


**INSTRUCTIONS:**

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.

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 District Director, San Diego, 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 ordered removed on January 31, 2005. The applicant re-entered the United States without inspection on February 26, 2005, and had his previous removal order reinstated on May 7, 2009. The applicant's departure from the United States was verified that same day. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C). He seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his U.S. Citizen spouse and children.

The District Director determined the applicant was inadmissible under section 212(a)(9)(C) of the Act, had not remained outside the United States for the requisite 10 years, and denied the Form I-212 accordingly. *See District Director's Decision*, dated March 22, 2010.

On appeal counsel for the applicant asserts because an extension of the applicant's V-2 status was approved, the approval retroactively resolved and purged his prior removal. *Brief in support of appeal*, received April 19, 2010. As such, counsel asserts the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act because he entered the United States legally in 2002 and did not accrue unlawful presence, nor is the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act because the issuance of the V-2 extension made the 2005 expedited removal void. *Id.* The applicant also submits letters from doctors as well as medical bills on appeal.

The record includes, but is not limited to, the documents listed above, other applications and petitions filed on behalf of the applicant, evidence of entry and immigration proceedings, statements from the applicant, his family, and friends, evidence of birth, marriage, divorce, permanent residence, and citizenship, evidence of residence in Mexico, and certificates on training and education. All evidence was considered in rendering a decision on appeal.

The applicant admitted he first entered the United States without inspection in February 1999. He departed for Mexico approximately two years later, obtained a V-2 visa, and re-entered the United States with that visa on August 14, 2002, with authorization to stay until January 27, 2003. *See Form I-94, Arrival-Departure Record*, August 14, 2002. The applicant later left the United States, and admitted under oath he attempted to enter without inspection by hiding in the trunk of a car on January 31, 2005.<sup>1</sup> *Sworn statement*, January 31, 2005. The applicant was placed in expedited removal proceedings, and was ordered removed that same day. *Order of Removal Under Section 235(b)(1) of the Act*, January 31, 2005. The applicant's removal on January 31, 2005 was also verified. *Form I-296, Notice to Alien Ordered Removed / Departure Verification*, January 31, 2005.

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<sup>1</sup> It is noted there is evidence of record showing the applicant attempted to enter the United States without inspection earlier in January 2005 by trying to jump a fence, but was turned back.

The applicant admitted under oath he later entered the United States without inspection on February 26, 2005. *Sworn statement*, May 7, 2009. He was again placed into removal proceedings, which were terminated on May 7, 2009 for lack of jurisdiction, given his previous removal. *Decision and Order of the Immigration Judge*, May 7, 2009. That same day, his 2005 removal order was reinstated. *Form I-871, Notice of Intent / Decision to Reinstate Prior Order*, May 7, 2009. The applicant was then removed from the United States. *Form I-205, Verification of Departure*, May 7, 2009. The applicant was found to be inadmissible to the United States for a period of 20 years pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i) because after being previously removed, the applicant re-entered the United States illegally and had the prior order reinstated under section 241(a)(5) of the Act.

Section 212(a)(9) of the Act states 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 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.

....

Counsel for the applicant contends because the applicant entered the United States legally pursuant to his V-2 visa in 2002, he did not accrue any unlawful presence and is thus not inadmissible under section 212(a)(9)(C)(i)(I) of the Act. *Brief in support of appeal*, received April 19, 2010. Counsel fails to note the fact that the applicant admitted he previously entered without inspection in February 1999, and accrued over one year of unlawful presence before departing in 2000, prior to the issuance of the V-2 visa. Even though the applicant made a lawful entry in 2002, the applicant's attempt to re-enter the United States without inspection on January 31, 2005 triggered inadmissibility under to section 212(a)(9)(C)(i)(I) of the Act.

Moreover, counsel's assertion that the applicant is not subject to 212(a)(9)(C)(i)(II) of the Act because his 2005 expedited removal was void due to the renewal of his V-2 status is without merit. *Brief in support of appeal*, received April 19, 2010. The applicant entered in V-2 status on August 14, 2002, and was authorized to stay until January 27, 2003, when the applicant turned 21 years of age. *See Form I-94, Arrival-Departure record*, August 14, 2002. The applicant remained in the United States past his date of authorized stay, and filed an application to extend his status on August 22, 2005. The applicant returned to Mexico while that application was still pending, thus triggering the requirement to obtain a visa before applying for admission into the United States. Section 211(a) of the Act. Additionally, although the application to extend his V-2 status was approved on June 6, 2006, valid from January 28, 2003 until August 21, 2007, at the time of his attempted entry without inspection on January 31, 2005 the applicant did not have any status or documentation which allowed him to apply for admission into the United States, nor did he follow the processes for being inspected and admitted. Moreover, although counsel claims the 2005 removal order is void, there is no evidence of record that such a determination was made, even though the applicant was in subsequent removal proceedings and had that removal reinstated.<sup>2</sup> Given the evidence of record, the AAO finds that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) and (II) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, 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 ten years ago, the applicant has remained outside the United States *and* CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on May 7, 2009. He is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> It is noted the AAO is not in a position to review the validity of this order or the reinstatement of removal.