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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**

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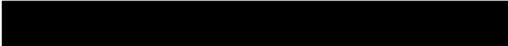


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Date: **MAR 19 2012**

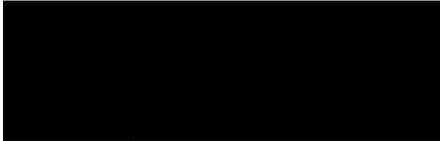
Office: SEATTLE

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

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,

  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Field Office Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States without being admitted in 1994. In February 2000, the applicant departed the United States. On February 23, 2000, the applicant attempted to procure entry to the United States by presenting a fraudulent Permanent Resident Card. See *Form I-213, Record of Deportable/Inadmissible Alien*, dated February 23, 2000. Consequently, the applicant was expeditiously removed from the United States. See *Notice to Alien Ordered Removed/Departure Verification*. The applicant subsequently entered the United States without being admitted on or around March 1, 2000. Based on the applicant's accrual of unlawful presence for a period of more than one year, his departure from the United States and his subsequent entry to the United States without being admitted, the field office director determined that the applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I). In addition, the field office director found that the applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as a result of the applicant's removal and subsequent entry to the United States without being admitted. He now seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to reside in the United States with his U.S. citizen father and lawful permanent resident mother.

The field office director concluded that the applicant did not meet the requirements for consent to reapply because he was currently in the United States after reentering illegally and 10 years had not elapsed since the date of his last departure. The applicant's Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) was denied accordingly. *Decision of the Field Office Director*, dated September 10, 2009.

In support of the appeal, counsel for the applicant submits a brief. Counsel asserts that the applicant filed the Form I-212 in reliance on *Perez-Gonzalez v. Ashcroft (Perez-Gonzalez)*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004), in which the Ninth Circuit Court of Appeals held that individuals who had been removed or deported may apply for adjustment of status along with an accompanying I-212 application. See *Brief in Support of Appeal*, dated November 11, 2009. Thus, counsel contends that the applicant's Form I-212 should be approved. The entire record was reviewed and considered in rendering this decision.

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.

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 ten 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). In *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), the Ninth Circuit overturned its previous decision, *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), and deferred to the BIA's holding that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-year bar.<sup>1</sup> Subsequent to the filing of the applicant's appeal, the Ninth Circuit clarified that its holding in *Duran Gonzalez* applies retroactively, even to those aliens who had Form I-212 applications pending before *Perez Gonzalez* was overturned. *Morales-Izquierdo v. DHS*, 600 F.3d 1076 (9th Cir. 2010). *See also Duran Gonzales v. DHS*, 659 F.3d 930 (9<sup>th</sup> Cir. 2011) (affirming the district court's order denying the plaintiff's motions to amend its class certification and declining to apply *Duran Gonzales* prospectively only); *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (stating that the general default principle is that a court's decisions apply retroactively to all cases still pending before the courts).

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* USCIS has consented to the applicant's reapplying for admission into the United States. In the present matter, the applicant is currently residing in the United States and did not remain outside the United States for ten years since his last departure. He is currently statutorily ineligible to apply for permission to reapply for admission.

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<sup>1</sup> Despite counsel's assertion that the applicant is eligible for adjustment of status under section 245(i) of the Act, the AAO notes that in *Duran Gonzales v. DHS*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007), the Ninth Circuit Court of Appeals held that an individual cannot qualify for adjustment of status under the plain language of section 245(i) of the Act if he is inadmissible under section 212(a)(9)(C) of the Act and has not remained outside the United States for ten years after the date of the person's last departure from the United States, as the individual is not eligible for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant is not eligible to apply for consent to reapply at this time. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.