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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: **SEP 11 2012**

Office: HOUSTON

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 application for permission to reapply for admission after removal was denied by the Field Office Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Mexico who was granted voluntary departure on May 18, 2005, and the Board of Immigration Appeals dismissed the applicant's appeal on May 31, 2006. As the applicant failed to depart, the applicant now under a removal order. 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) in order to reside in the United States with his U.S. citizen father.

The Field Office Director determined that there is no visa number currently available in the applicant's visa category, and that permission to reenter would serve no useful purpose. The applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) was denied accordingly. *See Field Office Director's Decision*, dated April 6, 2012.

On appeal, counsel submitted a brief, dated March 9, 2012, and referenced exhibits. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(A) Certain alien 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 5 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.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The record indicates that the applicant's father filed Form I-130, Petition for Alien Relative, on July 24, 2000, which was approved on August 21, 2009 under section 203(a)(1) of the Act, as the unmarried son of a U.S. citizen (category F-1).

In August, 1995, the applicant's father filed a Form I-130, Petition for Alien Relative, on behalf of his wife, the applicant's mother. This Form I-130 has the priority date of August 14, 1995. The applicant was born on April 24, 1978. As the applicant was under the age of 21 at the time his father filed this Form I-130, the applicant is entitled to the same priority date of August 14, 1995.

The record includes a marriage certificate for the applicant dated March 19, 2005. There is no indication in the record that the applicant has legally divorced his spouse. As such, the approval of the applicant's Form I-130, Petition for Alien Relative, would be converted to an approved petition under section 201(a)(3) of the Act, as the married son of a U.S. citizen (category F-3). According to the U.S. Department of State Visa Bulletin for August 2012, visa numbers are only available for Mexican applicants in the F-3 category whose priority dates are prior to January 22, 1993. As the applicant's priority date is August 14, 1995, there is currently no visa number available to the applicant.

The ability of the applicant to apply for an immigrant visa and admission to the United States as an immigrant would be based on the availability of a visa number under the applicant's processing priority. As noted above, there is no visa available to the applicant at this time. In the absence of an available visa, no application for admission is currently possible, and no purpose would be served in considering his application for permission to reapply for admission at this time. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.

**ORDER:** The appeal is dismissed.