



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 08 2013**

OFFICE: CHICAGO

IN RE:

APPLICATION:

Application for Permission 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.

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,

Ron Rosenberg
Acting 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, Chicago, Illinois and 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 by an Immigration Judge on July 15, 2009. The applicant is, therefore, inadmissible 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). He 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 lawful permanent residence wife, U.S. citizen children and grandchildren.

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.

(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 director determined that the negative factors of the applicant's immigration history outweigh the positive factors and denied the Form I-212 application accordingly. *See Field Office Director's Decision*, dated September 20, 2012.

On appeal, counsel asserts that the denial of the Form I-212 contains errors of facts and law and a brief would be submitted. *See Form I-290B, Notice of Appeal or Motion (Form I-290B)*, dated

October 18, 2012. The record does not contain an appellate brief by counsel and the record is considered complete as of the date of this decision.

The record contains, but is not limited to: Form I-290B; Forms I-212 and counsel's brief; a statement from the applicant and his spouse; medical documents; naturalization, marriage, divorce and birth certificates; financial documents; Form I-131, Application for Travel Document (Form I-131); Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485); Forms I-130, Petition for Alien Relative (Form I-130); and Form I-700 (Application for Temporary Status as a Special Agricultural Worker). The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004).

The record reflects that the applicant first entered the United States in January 1977, was arrested in May 1981 and granted voluntary departure by an immigration judge to depart the United States on or before August 19, 1981. He remained in the United States and was deported on October 15, 1981. The record reflects that the applicant entered the United States without inspection in 1983. The applicant's U.S. citizen son petitioned for him and the applicant concurrently filed Form I-485 on July 12, 1997. The applicant's Form I-485 adjustment of status application was denied on March 16, 2004. He was erroneously issued advance parole travel documents, which he used to try to enter the United States on February 28, 2008. After he received deferred inspection, he was placed in removal proceedings as an arriving alien. An immigration judge ordered him removed on July 15, 2009, and he subsequently departed the United States in August 2009.

The director found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking an immigration benefit by fraud or willful misrepresentation of a material fact. The record reflects that the applicant married his first spouse in 1965 and second spouse in 1985 without having divorced his first spouse. The second spouse, who the applicant indicated is his cousin on a previous application for stay of deportation, petitioned for the applicant as her husband by filing a Form I-130. The record indicates that the applicant may be inadmissible for misrepresenting a material fact of his marriage for an immigration benefit. The inadmissibility will not be addressed in this decision as the applicant has not filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), as required for a waiver of this inadmissibility under section 212(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO notes that the applicant may also be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his departure from the United States. He remained in the United States for more than one year after his adjustment of status application was denied in March 2004, until his departure. He accrued unlawful presence because he did not have an underlying adjustment of status application pending during that time, and the record does not indicate that he was in lawful status. This inadmissibility also will not be addressed in this decision because the applicant has not filed a Form I-601, required for a waiver of this inadmissibility under section 212(a)(9)(B)(v) of the Act.

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

- (i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-

...

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

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

Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act is dependent on showing that a bar to admission imposes extreme hardship on a qualifying relative, which includes a U.S. citizen or lawful permanent resident spouse or parent of the applicant. However, the

applicant has not filed a Form I-601 and remains inadmissible under section 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act. When an applicant for an immigrant visa is not physically present in the United States, he must file the application for permission to reapply for admission, Form I-212, and the waiver request, Form I-601, concurrently. 8 C.F.R. § 212.2(d); *see also Instructions for Form I-212*, available on the Internet at <http://www.uscis.gov/files/form/i-212instr.pdf>.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. Because the applicant is inadmissible to the United States under another section of the Act, no purpose would be served in approving his Form I-212 application 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 he is eligible for the benefit sought. The applicant in the instant case has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.