

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**

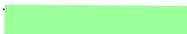


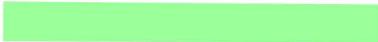
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DATE: **APR 09 2013**

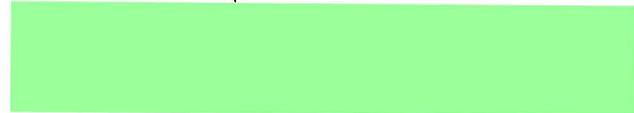
Office: SAN BERNARDINO

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:

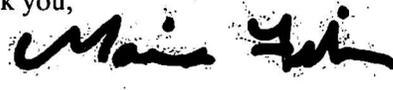


INSTRUCTIONS:

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.

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,

for 

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, 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 applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation, and under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for reentering the United States illegally after having been ordered removed.

The applicant subsequently filed Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. The Field Office Director found that the applicant had not met the requirements for consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act because he was still living in the United States and ten years had not elapsed since his last departure. Therefore, the Field Office Director denied the applicant's Form I-212. *See Decision of Field Office Director*, dated September 12, 2012.

On appeal, the applicant contests the finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Counsel for the applicant asserts that the fact that the applicant was detained at the border is insufficient to establish that he was removed. Additionally, counsel alleges that there is no evidence that the applicant was informed of his rights when he was placed in expedited removal proceedings under section 235(b) of the Act and cites *Rodriguez-Echeverria v. Mukasey*, 534 F. 3d 1047 (9th Cir. 2008), to support this assertion.

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.

The record establishes that the applicant entered the United States without inspection in 1991 and remained in the country until returning to Mexico for a visit in June 1999. On June 14, 1999, he applied for admission into the United States by presenting a Form I-551, Resident Alien Card, belonging to another person. During secondary inspection, the applicant admitted that the Form I-551 did not belong to him and that he had purchased it for \$50. The applicant was subsequently removed from the United States on June 14, 1999 pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). Later that same month, he reentered the United States without inspection. He has remained in the United States since that date. The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

On appeal, counsel claims that the applicant is eligible to apply for consent to reapply for admission to the United States. Counsel alleges that the applicant's "apprehension at the border, alone, is insufficient to constitute a valid order of removal which would render" the applicant inadmissible. Additionally, counsel suggests that the applicant's Fifth Amendment rights were violated because there is no evidence that he was advised of his procedural rights prior to being questioned and removed. Counsel asserts that based on the Ninth Circuit's decision in *Rodriguez-Echeverria v. Mukasey*, 534 F. 3d 1047 (9th Cir. 2008), the applicant's rights were violated because he was not advised of his right to counsel in his expedited removal proceedings. However, both the Ninth Circuit and the Board of Immigration Appeals have determined that, pursuant to 8 C.F.R. § 287.3, immigration officers need only advise aliens of their rights after an alien is placed into formal proceedings, pursuant to the filing of a Notice to Appear (NTA). *Matter of E-R-M-F- & A-S-M-*, 25 I&N Dec. 580 (BIA 2011); *Samayoa-Martinez v. Holder*, 558 F.3d 897 (9th Cir. 2009). There was no NTA filed in relation to this applicant, as he was placed in expedited removal proceedings pursuant to section 235(b)(1) of the Act and was not placed in formal immigration proceedings. The record clearly demonstrates that the applicant was placed in proceedings under section 235(b)(1) of the Act and that he was questioned pursuant to the proper procedures under such proceedings.

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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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 10 years ago, the applicant has remained outside the United States and USCIS has consented to the applicant's reapplying for admission.

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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.

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.