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U.S. Citizenship
and Immigration
Services

[Redacted]

DATE:

APR 11 2013

OFFICE: LOS ANGELES, CA

FILE:

[Redacted]

IN RE:

[Redacted]

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:

[Redacted]

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

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, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action consistent with this decision.

The applicant is a native and citizen of Mexico who entered the United States without inspection in 1991. The applicant was ordered deported from the country on March 22, 1993, and he was deported on March 24, 1993. He reentered the United States without admission or consent in 1993, and he has remained in the United States since that time. The applicant was found to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (Act), 8 U.S.C. §1182(a)(9)(C)(i)(II), for unlawfully reentering the United States after having been ordered removed. The applicant is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. §1182(a)(9)(A)(ii), for having been ordered removed and seeking admission within ten years of his removal. He seeks permission to reapply for admission into the United States after removal pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. §1182(a)(9)(A)(iii).

In a decision dated June 10, 2009, the director concluded that under section 212(a)(9)(C)(i)(II) of the Act, the applicant was barred from obtaining permission to reapply for admission until he remained outside of the United States for five years.¹ The applicant's waiver application was denied accordingly.

On appeal, the applicant asserts through counsel that he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act, because his removal and subsequent reentry into the country occurred prior to the April 1, 1997 date of enactment for section 212(a)(9)(C) of the Act.² Counsel asserts that evidence demonstrates the applicant is eligible for permission to reapply for admission under section 212(a)(9)(A) of the Act and that the applicant's Form I-212 should therefore be approved. In support of her assertions, counsel submits an affidavit from the applicant's wife, medical documentation, financial evidence, country-conditions information, academic evidence for the applicant's wife and children, birth certificates, photographs and a letter from the applicant's employer.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Aliens unlawfully present after previous immigration violations.-

¹ The director's decision erroneously indicates that section 212(a)(9)(C) of the Act requires an alien to remain outside of the United States for five, rather than ten years.

² Counsel timely appealed the director's June 10, 2009 decision to the AAO on July 2, 2009. The appeal was received by the AAO in September 2012.

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(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) [C]lause (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.

It is noted that section 212(a)(9)(C) of the Act went into effect on April 1, 1997, after the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA", Pub. Law 104-208, Sept. 30, 1996, 110 Stat. 3009-546). Section 212(a)(9)(C)(i)(II) of the Act therefore does not apply to reentries made prior to April 1, 1997. *See also, USCIS Memorandum, "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act), by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, dated June 17, 1997 (stating that under section 212(a)(9)(C)(i)(II) of the Act "the alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997.")*.

In the present matter the record reflects that the applicant was deported from the United States in March 1993, and he reentered the country without admission in 1993. Because his reentry occurred prior to April 1, 1997, the applicant is not inadmissible under section 212(a)(9)(C) of the Act, and he is not barred by section 212(a)(9)(C)(ii) of the Act from obtaining permission to reapply for admission.

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

(A) Certain aliens previously removed.-

(ii) [A]ny 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 record reflects that the applicant was ordered deported from the United States on March 23, 1993. He was deported from the country on March 24, 1993, and he subsequently reentered the United States without consent the same year. The applicant is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and he requires permission to reapply for admission, as set forth in section 212(a)(9)(A)(iii) of the Act.

The director erroneously denied the applicant's Form I-212 based on a finding that he was barred under section 212(a)(9)(C)(ii) of the Act from applying for permission to reapply for admission. Because no decision was issued on the merits of the applicant's Form I-212 application, the case will be remanded to the Field Office Director, Los Angeles, California, for issuance of a new decision. If the director's decision is adverse to the applicant, the decision shall be certified to the AAO for review in accordance with the requirements found at 8 C.F.R. § 103.4.

ORDER: The case is remanded to the Field Office Director for further action consistent with this decision.