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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **AUG 01 2013**

OFFICE: PHILADELPHIA, PA

File: 

IN RE:

Applicant: 

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Las Vegas Nevada, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the matter 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 April 23, 2012 and was removed to Mexico on or about May 24, 2012. 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 U.S. citizen spouse.

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 field office director determined that the negative factors, particularly the applicant's immigration violations and criminal history, outweigh the positive factors and denied the Form I-212 application accordingly. *See Field Office Director's Decision*, dated April 3, 2013.

On appeal, the applicant submits several criminal court dispositions and states: "I hope that this documentation will help to grant the opportunity to return to the United States as a permanent resident." See *Notice of Appeal or Motion* (Form I-290B), received May 1, 2013.

The record contains, but is not limited to: Form I-290B; Form I-212; and documents related to the applicant's criminal history, immigration violations, and removal. 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 shows that the applicant has been convicted in Nevada as follows: On March 19, 2001, the applicant was convicted of driving under the influence of alcohol, for his conduct on October 1, 2000. He was sentenced to two days in jail and fined \$400. The applicant was convicted on March 8, 2006 of Attempted Invasion of the Home (a Category C Felony), in violation of NRS §§ 193.330 and 205.067, for his conduct on December 14, 2005. He was sentenced to 12-32 months imprisonment, suspended. The applicant was convicted on June 12, 2008 of injury to other property. The applicant was convicted on May 4, 2011 of driving under the influence of alcohol, 2nd offense, for his conduct on July 3, 2009. The record shows that the applicant came to the attention of Immigration and Customs Enforcement (ICE) on March 26, 2012. After determining that he had entered the United States without inspection on an unknown date, at or near Tecate, California, ICE placed the applicant in removal proceedings, charging him under section 212(a)(6)(A)(i) of the Act as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. The applicant was additionally charged with inadmissibility under section 212(a)(2)(A)(i)(I) of the Act as an alien who has been convicted of a crime involving moral turpitude, for his March 8, 2006 conviction for attempted invasion of the home. On April 23, 2012, an immigration judge ordered the applicant removed to Mexico and denied his application for voluntary departure. On or about May 24, 2012, the applicant was removed to Mexico.

Based on the applicant's conviction for attempted invasion of the home, the field office director determined that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The applicant does not contest his inadmissibility. He requires a waiver under section 212(h) of the Act.¹

Section 212(h) of the Act provides, in pertinent part:

¹ While the applicant was removed for being inadmissible under both sections 212(a)(2)(A)(i)(I) and 212(a)(6)(A)(i) of the Act, the latter applies only to individuals who are present in the United States in violation of section 212(a)(6)(A)(i) of the Act, and inadmissibility under this section does not continue after the alien has departed the United States. See, *USCIS Policy Memo HQ70/21.1*, by Lori Scialabba, Donald Neufeld, Pearl Chang: "Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators; Revisions to the Adjudicator's Field Manual (AFM) to include a New Chapter 40.6 (AFM Update AD07-18)," dated March 3, 2009, at page 8, section (3)(ii). Therefore, while the applicant is no longer inadmissible under section 212(a)(6)(A)(i) of the Act, he remains inadmissible under section 212(a)(2)(A)(i)(I) and requires a waiver under section 212(h) of the Act.

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . . .

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

As addressed by the field office director, the applicant has not filed a Form I-601 and remains inadmissible under section 212(a)(2)(A)(i)(I) 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>.

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. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). Because the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, no purpose would be served in approving his Form I-212 application for permission to reapply for admission.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.