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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

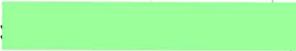


U.S. Citizenship
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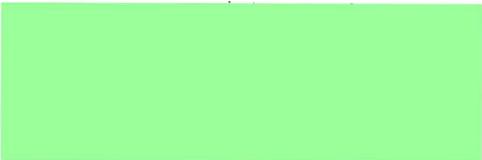
Date: **AUG 22 2013** Office: HOUSTON, TX

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 (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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Interim District Director, Houston, Texas, 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 record reflects that the applicant is a native and citizen of Mexico who was ordered removed from the United States by an immigration judge on April 5, 2001. The applicant was found to have been convicted of an aggravated felony as defined by section 101(a)(43)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1101(a)(43)(G). The applicant was removed from the United States on May 16, 2001. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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.

The District Director determined the applicant was additionally inadmissible pursuant to section 212(a)(9)(C) of the Act for which there is no waiver. *See District Director's Decision*, dated November 24, 2003. The Form I-212 was accordingly denied. *Id.*

On appeal, submitted by counsel on December 22, 2003 and received by the AAO on May 18, 2013, counsel contends the applicant is not inadmissible under section 212(a)(9)(C) of the Act because he never re-entered the United States after he was removed.

The record reflects that on or about September 7, 2001 the applicant's spouse filed a Form I-130, Petition for Alien Relative, on behalf of the applicant to classify him as the spouse of a U.S. citizen. USCIS subsequently sent a Request for Evidence (RFE) to the attorney of record on September 9, 2003, and to the applicant's spouse, on July 29, 2004. Both RFEs were returned to USCIS as undeliverable. Consequently, action on the I-130 Petition was terminated pursuant to 8 C.F.R. §103.2. Therefore, the applicant does not have an underlying approved I-130 Petition with which to apply for adjustment of status or to obtain an immigrant visa. There is no indication that the applicant has any other petitions with which to obtain adjustment of status or an immigrant visa.

In the absence of an approved I-130 petition no purpose is served in adjudicating his application for permission to reapply for admission into the United States after deportation or removal or determining whether he is inadmissible under section 212(a)(9)(C) of the Act. The applicant may also be otherwise inadmissible due to his criminal conviction and other immigration violations, but without an approved immigrant petition, those issues will not be reached on appeal.

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. The appeal of the denial of the application must therefore be dismissed.

ORDER: The appeal is dismissed.