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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
and Immigration
Services

[REDACTED]

Date: **AUG 22 2013** Office: FRESNO, CA [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

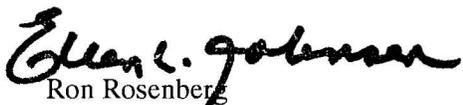
[REDACTED]

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,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The 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, Fresno, California. On appeal, the Administrative Appeals Office (AAO) remanded the matter to the field office director who subsequently denied the application. The matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who filed a Form I-212, seeking permission to reenter the United States in order to reside with his U.S. citizen wife and child.

The field office director found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for being unlawfully present after previously being removed from the United States. The field office director found that because the applicant is currently living in the United States after reentering illegally, the applicant does not meet the requirements for consent to reapply and denied the application accordingly. *Decision of Field Office Director*, dated August 3, 2009. On appeal, the AAO withdrew the field office director's decision after concluding that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act because he reentered the United States prior to April 1, 1997, the effective date of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA). The AAO found, however, that the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act as an alien who was previously removed and remanded the matter to the field office director for a full adjudication of the application on the merits. The AAO specified that the applicant is eligible to apply for permission to reapply for admission to the United States and further stated that if the field office director's new decision was adverse to the applicant, the matter shall be certified to the AAO for review. *Decision of the AAO*, dated March 15, 2010. On June 16, 2010, the field office director reopened the Form I-212. *Decision of Field Office Director*, dated June 16, 2010. On June 25, 2010, the field office director again found that the applicant is inadmissible under "section 212(a)(9)(A)(i)(ii)[sic]" of the Act, and that the applicant does not meet the requirements for consent to reapply because he is currently living in the United States after reentering illegally. *Decision of Field Office Director*, dated June 25, 2010.¹ The field office director did not certify the case to the AAO for review. The current Form I-290B, filed on July 27, 2010, was received by the AAO on April 8, 2013.

After a complete review of the entire record, the AAO finds that the appeal must be dismissed. As an initial matter, we note that the field office director erroneously relied on *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), in concluding that the applicant is ineligible for consent to reapply for admission because the applicant is currently living in the United States after reentering illegally. *Matter of Torres-Garcia* addressed inadmissibility under section 212(a)(9)(C) only, and did not address inadmissibility under section 212(a)(9)(A). As stated in our previous decision, the applicant

¹ In her brief counsel refers to the June 25, 2010 decision of the field officer director, as well as the field office director's April 13, 2010 denial of the applicant's application for adjustment of status as "AAU (Administrative Appeals Unit)" decisions. The AAO would like to clarify that the Administrative Appeals Office (AAO) is the only appellate office within the USCIS. Both decisions were clearly rendered by the field office.

in this case is *not* inadmissible under section 212(a)(9)(C), but rather, is inadmissible under section 212(a)(9)(A). By its express terms, section 212(a)(9)(A)(iii) of the Act permits an applicant who is inadmissible under section 212(a)(9)(A) to apply for consent from the Secretary of Homeland Security to reapply for admission. *See* Section 212(a)(9)(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 Attorney General [now Secretary of Homeland Security] has consented to the alien’s reapplying for admission.”). Therefore, as we stated in our previous decision, the applicant is eligible to apply for permission to reapply for admission to the United States.

Nonetheless, the appeal must be dismissed. After a complete review of the record, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Specifically, the record shows that on January 14, 1997, the applicant applied for admission into the United States at the San Ysidro, California, Port of Entry and presented to immigration officials a Border Crossing Card (Form I-586) under the name [REDACTED]. Furthermore, the record shows that on December 22, 1992, the applicant was convicted of California Vehicle Code section 10851(a), grand theft auto, a felony, and was sentenced to three years of probation and 90 days in jail. Therefore, the applicant may also be inadmissible pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude. Significantly, there is no indication in the record that the applicant has ever filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, for a waiver of inadmissibility pursuant to sections 212(i) and (h) of the Act, respectively.

The AAO notes that counsel contends in her brief that the applicant “filed applications for waivers of inadmissibility on Form I-212 (prior removal order).” *Applicant’s Brief in Support of His Appeal and Motion to Reconsider Denial of I-212 Waiver and Request that the AAO Certify His Case to Itself*, dated July 26, 2010, at 1. The AAO clarifies that a Form I-601 is the form required to apply for a waiver of inadmissibility; an applicant may not apply for a waiver of inadmissibility on Form I-212, a separate application requesting permission to reapply for admission after deportation or removal.

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 that no purpose would be served in granting the application. In this case, the applicant is subject to the provisions of section 212(a)(6)(C)(i) and possibly section 212(a)(2)(A)(i) of the Act. There is no indication the applicant has applied for a waiver of inadmissibility under sections 212(i) and (h) of the Act, respectively. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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.