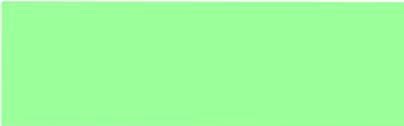




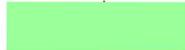
U.S. Citizenship
and Immigration
Services

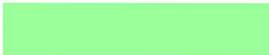
(b)(6)



Date: **FEB 12 2013**

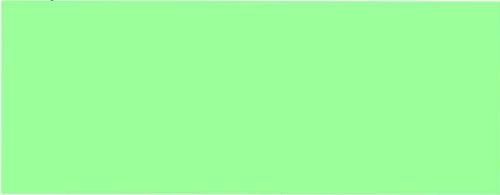
Office: LOS ANGELES

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,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, 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 Form I-212 will be denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude; and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant 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 his U.S. citizen wife and children.

The field office director stated that U.S. Citizenship and Immigration Service (USCIS) records indicate that the applicant was summarily removed from the United States on April 25, 1998, and had subsequently re-entered the United States at an unknown date. The director stated that on June 8, 2009, Immigration and Customs Enforcement reinstated the removal order, rendering the applicant ineligible for any relief.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i).

Section 212(a)(9)(C) of the Act states:

(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 1225(b)(1) of this title, section 1229a of this title, 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 of Homeland Security has consented to the alien's reapplying for admission.

In the brief dated August 11, 2009, counsel asserts that the applicant's Form I-212 should be approved because *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), cannot be retroactively applied in light of *Montgomery Ward & Co., Inc. v. F.T.C.*, 691 F.2d 1322 (9th Cir. 1982), which established criteria for determining retroactivity of agency decisions. Counsel contends that more than 10 years have passed since the applicant's 1998 expedited removal, and consent to reapply for admission may be granted *nunc pro tunc*. Counsel argues that the statute does not require for the applicant to wait outside the United States before applying for a waiver under section 212(a)(9)(C)(ii) of the Act. Counsel asserts that the applicant was not served with an order of reinstatement.

Upon review of the record, it reflects that on April 25, 1998, the applicant applied for admission into the United States by presenting a valid Resident Alien Card (I-551) in the name [REDACTED]. The applicant was summarily removed from the United States and prohibited from entering for five years. However, the applicant returned to the United States without admission a week later. The applicant left the United States on August 3, 2005, and without admission returned two weeks later. Social security records show the applicant was employed in the United States through the years 1990 to 2006. In light of the record, the applicant is inadmissible under 212(a)(9)(C)(i) for having been unlawfully present in the United States for an aggregate period of more than one year.

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 ten 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). In *Duran Gonzalez*, the Ninth Circuit Court of Appeals overturned its previous decision, *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), and deferred to the Board's holding that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-year bar. The Ninth Circuit clarified that its holding in *Duran Gonzalez* applies retroactively, even to those aliens who had Form I-212 applications pending before *Perez Gonzalez* was overturned. *Morales-Izquierdo v. DHS*, 600 F.3d 1076 (9th Cir. 2010). See also *Duran Gonzales v. DHS*, 659 F.3d 930 (9th Cir. 2011) (affirming the district court's order denying the plaintiff's motions to amend its class certification and declining to apply *Duran Gonzales* prospectively only); *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (stating that the general default principle is that a court's decisions apply retroactively to all cases still pending before the courts).

ORDER: The appeal will be dismissed.