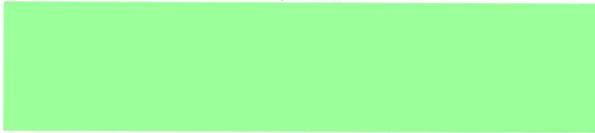




U.S. Citizenship  
and Immigration  
Services

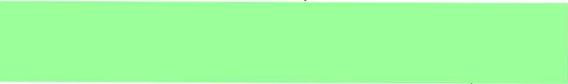
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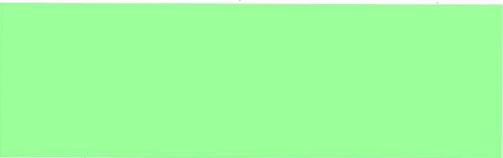
Date: JAN 30 2013

Office: SAN DIEGO

FILE: 

IN RE: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to 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 with the field office or service center that originally decided your case by filing a 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,

Ron Rosenberg, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, San Diego, California, 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 on appeal with the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible pursuant to section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C) for having entered the United States without being admitted after having been ordered removed. The applicant is also inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for a period of ten years since his last departure as a result of the removal order entered in his case.<sup>1</sup> 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).

On June 11, 2012, the District Director denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) stating that the applicant is not eligible for relief under the Act pursuant Section 212(a)(9)(C)(i)(II) of the Act.

On appeal, counsel for the applicant states that the District Director erred in denying applicant's Form I-212, as the applicant's last entry into the United States was lawful.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO will first address the question of whether the applicant is admissible to the United States.

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

- (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 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) 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.

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<sup>1</sup> Although not the subject of this appeal, the AAO also notes that the applicant appears to be inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 212(a)(6)(C), for having attempted to procure admission to the United States through fraud or willful misrepresentation of a material fact and under section 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure.

The applicant has a long immigration history in the United States, however, only the portion of that history relevant to the underlying application for permission to reapply for admission after deportation or removal (Form I-212) will be discussed as a part of this decision. The record reflects that the applicant was ordered removed to his native Mexico by the Immigration Judge in Imperial, California on October 22, 2002. The applicant's appeal of that decision was dismissed by the Board of Immigration Appeals on January 27, 2004. The applicant was apprehended and removed from the United States on August 19, 2004. After his removal from the United States, the applicant filed a Form I-687, Application for Status as a Temporary Resident pursuant to Section 245A of the Act, and Form I-131, Application for Advance Parole, noting an address in the United States. When the applicant received notice to attend a biometrics appointment in connection with those applications, the record reflects that he entered the United States without admission on or about March 22, 2005 and presented himself for biometrics at an Application Support Center (ASC) in California. In a sworn statement dated September 26, 2011, the applicant states that he entered the United States "over the gate" for fingerprints, then went back to Mexico. As a result of the applicant's entry into the United States without admission after the removal order in his case, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The AAO notes that the applicant reentered the United States on July 3, 2005 pursuant to advance parole, but he had already triggered inadmissibility under section 212(a)(9)(C)(i)(II) of the Act at that time. As a result of the applicant's previous admission without admission after a removal order was entered in his case, the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act and is not eligible for the exception at section 212(a)(9)(C)(ii).

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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, the Board of Immigration Appeals has held that it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States and USCIS has consented to the applicant's reapplying for admission.

Because the applicant has not met the statutory criteria set forth in section 212(a)(9)(C)(ii), no purpose would be served in determining whether the applicant warrants a favorable exercise of discretion in adjudicating the application to reapply for admission into the United States. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the District Director. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, the AAO finds that the applicant has not met his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.