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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

Date: MAY 07 2013

Office: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: [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 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 application for permission to reapply for admission after removal was denied by the Field Office Director, San Francisco, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and a citizen of Mexico who entered the United States without inspection on or about October 27, 1980. On June 14, 1983, the applicant was convicted of aggravated battery and sentenced to two years imprisonment. On December 2, 1983, the applicant was ordered deported from the United States pursuant to section 241(a)(2) and (4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1251(a)(2) and (4), as an alien who entered the United States without inspection and as an alien who after entry had been convicted of crimes involving moral turpitude for which a term of imprisonment exceeding one year was imposed. The order of deportation was executed on December 5, 1983. The record reflects that the applicant reentered the United States approximately two weeks after his deportation, without lawful admission or parole and without permission to reapply for admission. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He now 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 remain in the United States and reside with his family.

In a decision, dated March 22, 2010, the field office director determined that the applicant was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, that he was not eligible for a waiver of this inadmissibility, and thus, no purpose would be served in granting the applicant's permission to reapply for admission. The field office director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly.

In a brief on appeal, counsel stated that the applicant did not believe he was deported in 1983, but was granted voluntary departure. She stated that the applicant had a pending legalization application and in 1989 was granted advanced parole without ever being notified that he had been deported. Counsel stated that the fact that agency records fail to show that the applicant entered the United States with a valid parole document in 1989, does not indicate that this valid entry did not happen as agency records are notorious for being "inadequate, unreliable, and inaccurate." She stated that the field office director's conclusion that the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act was unwarranted since his return to the United States on advanced parole qualifies as an exception to this ground of inadmissibility.

In our decision on appeal, dated August 13, 2012, we noted that counsel's assertions regarding the applicant's departing under a grant of voluntary departure were unfounded. The record clearly showed that on December 5, 1983 the applicant's deportation order was executed with the applicant being taken to the [REDACTED] port of entry in [REDACTED] Texas by an immigration official, with the applicant traveling by foot across the border. We also noted that counsel's statements regarding the applicant's entry into the United States on a valid parole document in 1989 exempting him from inadmissibility under section 212(a)(9)(A)(ii) of the Act were unfounded and not supported by the Act or case law. The AAO noted that in granting the applicant advanced parole in 1989, the service may have failed to recognize his ineligibility for this benefit given his deportation in 1983, but that oversight did not warrant us ignoring the facts as they were seen at the time of the appeal.

In our decision on appeal we also found that because the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. As we dismissed the applicant's appeal of the Form I-601 denial, no purpose was served in granting the applicant's Form I-212. See *Matter of J- F- D-*, 10 I&N Dec. 694 (Reg. Comm. 1963). We denied the Form I-212 appeal accordingly.

On motion, counsel submits additional evidence of hardship and positive equities in the applicant's case.

The record indicates that on June 14, 1983, in [REDACTED] Illinois, the applicant was convicted of aggravated battery for events that occurred on December 24, 1982. He was sentenced to two years imprisonment. The complaint in the applicant's case indicates that he knowingly and intentionally caused great bodily harm to his victim by stabbing him with a knife. The AAO found that the applicant's conviction is an aggravated felony under section 101(43)(F) of the Act as a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment of at least 1 year.<sup>1</sup> Thus, as an alien convicted of an aggravated felony, the applicant will always require permission when reapplying for admission to the United States.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(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 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.

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<sup>1</sup> 18 U.S.C. §16 states:

The term "crime of violence" means—

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

As an alien previously removed who has been convicted of an aggravated felony, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission to the United States.

As indicated in previous decisions by the AAO, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. In addition to his permission to reapply for admission requires a waiver under section 212(h) of the Act. Furthermore, the applicant's conviction is for a violent crime, and is thus subject to the heightened discretionary standard under 8 C.F.R. § 212.7(d). The AAO found in a previous decision that the applicant has not established that extraordinary circumstances warranted approval of his waiver. denied his waiver application accordingly. We then found, as stated above, that because the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude, and the AAO had dismissed the appeal of his Form I-601 waiver denial, no purpose would be served in granting the applicant's Form I-212. *Matter of J- F- D-*, 10 I&N Dec. 694 (Reg. Comm. 1963). We denied the Form I-212 appeal as a matter of discretion accordingly.

On motion, counsel submits documentation indicating that the applicant's U.S citizen son tragically died in 2012 from an automobile accident in Mexico. The record also shows that the applicant owns a home in the United States with a mortgage of \$551,681 and has been treated for prostate cancer, which is now in remission. The record indicates further that the applicant is the sole provider for his spouse, has three U.S. citizen stepchildren, and two U.S. citizen grandchildren. However, as we denied the applicant's prior appeal on the basis that no purpose is served in granting the I-212 where inadmissibility has not been waived, the applicant must address that basis for denial in seeking reopening or reconsideration. The applicant filed a motion to reopen our dismissal of his appeal of the denial of his Form I-601. In a separate decision, we have affirmed our prior decision and the Form I-601 remains denied. Therefore, the applicant remains inadmissible on other grounds and there continues to be no purpose served in granting the Form I-212. The applicant has not demonstrated otherwise as required to succeed on the present motion.

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. The motion is dismissed.

**ORDER:** The motion is dismissed.