



(b)(6)

[Redacted]

Date: **MAR 18 2014**

Office: SAN BERNARDINO, CA [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 (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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, 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 before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who has been ordered deported by an Immigration Judge five times: in October 1979, March 1982, August 1983, November 1985, and November 1991. 8 C.F.R. § 212.7(d) The applicant is married to a U.S. citizen and seeks permission to reenter the United States after his removals in order to reside with his wife and children in the United States.

The field office director found that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having unlawfully re-entered the United States after being removed and that ten years had not elapsed since the applicant's departure. The field office director denied the application accordingly.

On appeal, counsel contends the applicant is eligible to seek permission to reenter the United States because his removal and reentry into the United States occurred prior to April 1, 1997, the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After a careful review of the entire record, the AAO finds that counsel is correct in his contention that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act. The applicant's last reentry into the United States was in 1992 and there is no suggestion in the record that the applicant reentered the United States without admission at any time after the effective date of IIRIRA. Therefore, the applicant is eligible to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

Nonetheless, the appeal must be dismissed. In a separate decision, the field office director denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601), which the applicant filed in relation to his inadmissibility under section 212(a)(2)(A)(i) of the Act for his conviction of a crime involving moral turpitude. The AAO has dismissed the applicant's appeal of that decision.

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)(2)(A)(i) of the Act and was denied a waiver. The AAO has denied the applicant's appeal of that decision. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States.

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.