



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF Q-V-A-

DATE: OCT. 5, 2015

APPEAL OF FRESNO, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL

The Applicant, a native and citizen of Mexico, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (INA, or the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Field Office Director denied the application. The matter is now before us on appeal. The appeal is dismissed.

The record reflects that in July 1994, the Applicant attempted to procure entry to the United States by presenting fraudulent documentation. The record also reflects the applicant subsequently entered the United States without inspection on or around July 27, 1995, and he has remained in the United States to date.

The Applicant filed the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, in August 2009. The Field Office Director determined the Applicant's Form I-212 was not necessary and denied the Applicant's Form I-212 accordingly.

On appeal, this office determined that no purpose would be served in addressing the merits of the Applicant's Form I-212 application as he also was determined to be inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation with respect to his attempt to procure entry to the United States in July 1995 with fraudulent documentation, and had not filed a Form I-601, Application for Waiver of Grounds of Inadmissibility to address this inadmissibility. The appeal was subsequently dismissed.

On motion, this office withdrew our previous I-212 decision and remanded the matter to the Field Office Director to determine if in fact the Applicant was ordered excluded in July 1995, thereby rendering the Applicant inadmissible under section 212(a)(9)(A) of the Act. We stated in our decision to remand the matter, in pertinent part:

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial. *See* 8 C.F.R. § 103.3(a)(i). Therefore, the AAO remands the matter to the Field Office Director to determine whether the applicant was ordered excluded in July 1995 and, thereby,

inadmissible under section 212(a)(9)(A) of the Act. Should the Field Office Director determine the applicant is subject to 212(a)(9)(A) of the Act, the Field Office Director will issue a new decision denying the applicant's Form I-212 as no purpose would be served in granting the applicant's Form I-212 when the applicant also is inadmissible under section 212(a)(6)(C)(i) of the Act and no waiver has been approved.... In the alternative, should it be determined that the applicant is not subject to section 212(a)(9)(A) of the Act, then the Field Office Director will issue a new decision dismissing the Form I-212 as moot.

On February 3, 2015, the Field Office Director concluded that the record did not establish that the Applicant was ordered excluded at any time. The Field Office Director thus denied the Form I-212 as unnecessary.

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

(A) Certain alien previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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.

(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 who 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.

(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

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continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The Field Office Director has determined that the Applicant was never ordered excluded from the United States. As such, the Applicant's appeal will be dismissed and the application for permission to reapply for admission after deportation or removal is declared unnecessary.<sup>1</sup>

**ORDER:** The appeal is dismissed.

Cite as *Matter of Q-V-A-*, ID# 13990 (AAO Oct. 5, 2015)

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<sup>1</sup> On appeal, the Applicant references his adjustment of status application. This office does not have appellate jurisdiction over the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to this office by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). We exercise appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.