



U.S. Department of Justice
Immigration and Naturalization Service

N

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Nebraska Service Center

Date: FEB 14 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

Public Copy
Identity of the individual is protected.
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected. The director's decision will be withdrawn, and the matter will be remanded to her for further consideration and action.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on May 29, 1985. The applicant was removed from the United States on May 26, 1985; therefore he is inadmissible under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii). The applicant was present in the United States again shortly thereafter and without a lawful admission or parole and without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). The applicant married his present spouse in Mexico in 1983, and is the beneficiary of an approved family based preference visa petition as the brother of a U. S. citizen. The applicant seeks permission to reapply for admission into the United States under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to remain in the United States.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, the applicant states that he understood in 1985 that he was to be a witness and was present so that he could testify against a "coyote." The applicant states that he wanted to leave the United States voluntarily but was told that it was in his best interest to stay and testify. He states that he was held for 28 days and then put into a deportation hearing. The applicant states that he requested to be returned to Mexico at the hearing. He states that he cooperated with the Service and maybe that was his punishment in 1985 to be deported and he did not understand the difference between voluntary departure and being deported.

The applicant has raised an issue on appeal, assisting the government as a material witness, about which there is no documentation contained in the record, and which may have an important impact on the favorable grant of the Attorney General's discretion.

Having knowledge about some of the hardships and dangers such witnesses face in the form of reprisals when they testify against one of their own countrymen, the Associate Commissioner will withdraw the director's decision and remand the record for the director to render a new decision based on the applicant's entire immigration file [REDACTED] and [REDACTED]. If the decision is adverse to the applicant, the director shall certify the entire record to the Associate Commissioner for review.

As constituted, the record fails to contain specific evidence present in other Service records which could be used in the adjudication process to support the application and the appeal. Therefore, the director's decision will be withdrawn.

The appeal of the director's decision will be rejected, and the record remanded to him so that she can adjudicate the case and enter a new decision based on documentation contained in a record of proceeding which can be properly reviewed by the Associate Commissioner. If that decision is adverse to the applicant, the director will certify her decision and the entire record to the Associate Commissioner for review.

ORDER: The appeal is rejected. The director's decision is withdrawn. The matter is remanded to her for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.