

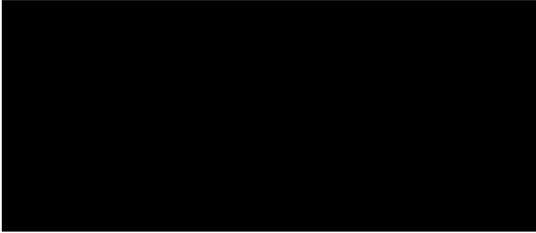


U.S. Department of Justice

Immigration and Naturalization Service



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



FILE: [Redacted]

Office: Nebraska Service Center

Date:

MAY 17 2000

IN RE: Applicant:



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

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

Identifying data deleted to prevent disclosure of information in violation of the Privacy Act

DISCUSSION: The application in this matter 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 lawfully admitted for permanent residence on September 9, 1996. On May 22, 1997, he was convicted of the offense of Sexual Abuse in the third degree and was sentenced to 10 years imprisonment. The sentenced was suspended and the applicant was placed on probation for 3 years. On July 7, 1997, the applicant was ordered removed from the United States and he was removed from the United States on that date.

Although the director rendered a decision relating to the applicant's alleged application for permission to reapply for admission, the record fails to contain that application or any evidence that an appeal has been properly filed.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision; including the following items arranged from top to bottom in the following order:

- (1) Notice of Entry of Appearance as Attorney or Representative (Form G-28).
- (2) Brief, statement, and/or supporting evidence.
- (3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).
- (4) Decision(s).
- (7) Investigative reports and/or other derogatory information.
- (8) Application(s) or petition (Form I-601).
- (10) Evidence in support of application or petition.

As constituted, the record fails to contain an application and all evidence in support of such application which could be used in the adjudication process. Therefore, the director's decision will be withdrawn.

The matter will be remanded to the director to enter a new decision based on all 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 his decision to the Associate Commissioner for review accompanied by a properly prepared record of proceeding.



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.