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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[Redacted]

FILE [Redacted] Office: California Service Center

Date: APR 21 2003

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:
[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

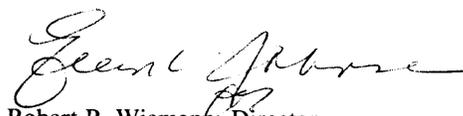
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wieman, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole in 1978. He applied for Legalization and was issued Forms I-210 and I-94 reflecting his entry without inspection in December 1981. On November 28, 1985, he was served with an Order to Show Cause. The applicant was ordered deported by an immigration judge, and he was removed from the United States on December 6, 1985. Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). Shortly thereafter the applicant was again present in the United States without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony).

After his reentry, the applicant lived in the United States with his permanent resident wife and family until June 1994. He returned to Mexico for approximately 18 months. After that, he was present again in the United States without a lawful admission or parole in December 1995. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his naturalized U.S. citizen daughter. The applicant 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).

On appeal, the applicant states that there are too many errors in the decision.

Section 212(a)(9)(A) of the Act provides, in part, that:

(i) 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) Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act 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) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The acting director reviewed the applicant's letter dated November 15, 2001, in which he indicated that he came to the United States in May 1998 and determined that the applicant's reentry without permission to reapply for admission in May 1998 reinstated the Warrant of Deportation. The acting director concluded that the applicant is inadmissible under section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and ineligible for any relief.

Section 241(a)(5) of the Act provides that:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

The applicant was removed from the United States on December 6, 1985. He has never been granted permission to reapply for admission. The record reflects that the applicant unlawfully reentered the United States shortly after December 6, 1985. The applicant departed the United States again in June 1994 and reentered unlawfully in December 1995. The applicant's statement that he reentered the United States unlawfully in May 1998 and after April 1, 1997, the effective date of section 241(a)(5), renders him subject to the provisions of section 241(a)(5) of the Act. Therefore, he is not eligible for relief under this Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.