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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

[redacted]

JUN 1 2 2003

FILE [redacted] Office: Vermont Service Center Date:

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: Self-represented

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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion to reopen. The matter is before the AAO on a second motion to reopen. The matter will be remanded to the director for further action.

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on June 1, 1991. A Notice to Appear was served on him on July 16, 1997. The applicant's wife and two children entered the United States unlawfully in 1996. His request for asylum was denied and the applicant and his family were ordered removed from the United States *in absentia* on August 6, 1999. The applicant failed to depart. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

The applicant is a derivative beneficiary of a Petition for Alien Relative through a petition filed on behalf of his wife by her naturalized U.S. citizen father. 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).

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The AAO affirmed that decision on appeal and again on first motion.

On second motion, the applicant states that the Form I-212 applications for his wife, [redacted] and his daughter, [redacted] have been approved. He states that the applications were sent in the same package, to the same office for the same reason. The applicant wonders why there is a different outcome.

Since evidence of the approval of the Form I-212 applications filed by the applicant's wife and daughter is not in the record, the matter will be remanded to the director to obtain those two Bureau files and verify the applicant's assertion. If, upon review, the applicant's assertion is found to be correct, the director shall forward all three Bureau files, as well as his other daughter, [redacted] file [redacted] to the AAO for review. If the assertion is not correct, the director shall forward the applicant's file to the AAO with that evidence.

ORDER: The matter is remanded to the director for further action as mentioned above.