PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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]

FILE [redacted] Office: California Service Center Date: JUN 12 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]

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, 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 initially present in the United States without a lawful admission or parole on January 30, 1994. On July 31, 1996 he attempted to procure admission to the United States by falsely claiming to be a United States citizen. He was found inadmissible under section 212()(7)(A)(i)(I) of the Act and was served with an Order to Show Cause. The applicant was mistakenly given voluntary departure and did not appear for a hearing on August 30, 1996. The immigration judge terminated the proceedings.

On July 4, 2000, the applicant again attempted to procure admission into the United States by falsely claiming to be a United States citizen. He was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for having falsely represented himself as a citizen of the United States. He was removed to Mexico on July 4, 2000. He is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

The applicant married a United States citizen in March 1997, while unlawfully present in the United States, and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks permission to reapply for admission under section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii).

The director concluded from documentation in the record that the applicant had unlawfully reentered the United States following his removal. Such presence in the United States following a removal and without a lawful admission or parole and without permission to reapply for admission is a violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). Therefore, the director concluded that the applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

On appeal, counsel states that the director's decision is misplaced. Counsel cites the "exception" paragraph of section 212(a)(9)(A)(iii) of the Act. Counsel states that it is not necessary for the applicant to wait 5 or 10 or 20 years before reapplying for admission. It is noted that in his decision the director refers to the "exception" paragraph in section 212(a)(9)(C)(ii) of the Act which relates to aliens unlawfully present after previous immigration violations. This is the proper section of law in the present case.

Section 212(a)(9)(C) of the Act provides that:

(i) Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
>
> and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States 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 record reflects that the applicant was removed on July 4, 2000. He appears to have reentered the United States without being admitted shortly thereafter. Therefore, the applicant is mandatorily inadmissible because 10 years have not elapsed since his last departure.

In addition, the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, for having falsely represented himself as a United States citizen.

Section 212(a)(6)(C)(ii) of the Act provides that:

> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

The record contains a Form I-860 that reflects that the applicant was found to be inadmissible under section 212(a)(6)(C)(ii) of the Act on July 4, 2000, for having falsely represented himself as a United States citizen. Since no waiver of this ground of inadmissibility is available, he is mandatorily inadmissible to the United States, and a favorable exercise of discretion in this matter is not warranted

In *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg. Comm. 1963), and *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), it was held that an application for permission to reapply for admission may be denied as a matter of discretion when the applicant is mandatorily inadmissible to the United States and no waiver is available for such ground of inadmissibility.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Attorney General's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.