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: San Antonio Date: MAY 23 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 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 District Director, San Antonio, Texas, 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 attempted to procure admission into the United States on May 26, 1999, by presenting a Border Crossing Card. He was referred to secondary inspection when it was discovered that he was driving a stolen car. Later, the applicant admitted to having resided in the United States for the past six years. He was expeditiously removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1). Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

On May 30, 1999, the applicant was present in the United States again 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). The applicant pleaded guilty to a violation of 8 U.S.C. § 1325(a), Illegal Entry (Felony) on July 20, 1999. On November 4, 1999, the applicant pleaded guilty to the offenses of New Law Violation: Illegal Entry, and Violation of Special Condition: Not to Return to the United States Illegally. The district court judge sentenced the applicant to a total of 190 days in jail and he was released under supervision for one year.

A Notice to Appear was served on the applicant on December 4, 1999. On December 21, 1999, an immigration judge ordered the applicant removed from the United States. He was removed on January 3, 2000. The applicant was present in the United States again on January 3, 2000, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act.

The applicant married a U.S. citizen on June 5, 1999, and the record is silent as to whether he is the beneficiary of a Petition for Alien Relative. 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.

On appeal, filed on March 26, 2002, counsel requested an additional 45 days to file a written brief. More than 45 days have elapsed since the appeal was submitted and no additional evidence has been received. Therefore, a decision will be entered based on the present record.

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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or sought to enter the United States without inspection are inadmissible.

The record reflects that the applicant was expeditiously removed on May 26, 1999. He reentered the United States without being admitted on May 30, 1999. He was ordered removed on December 21, 1999, and was removed on January 3, 2000. The applicant was unlawfully present again on January 3, 2000. Therefore, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and must remain outside the United States for at least 10 years before the Bureau will consider his application for permission to reapply.

Further, section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), 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 unlawfully reentered the United States after April 1, 1997, the effective date of section 241(a)(5), and he is subject to the provisions of section 241(a)(5) of the Act. Therefore, he is not eligible for any relief under this Act. *See Matter of G-N-C-*, 22 I&N Dec. 281, 297, 299 (BIA 1998). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.