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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

Date: [REDACTED] Office: CHICAGO, ILLINOIS

FILE: [REDACTED]

JAN 10 2012

IN RE: [REDACTED] 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was granted voluntary departure by an Immigration Judge and subsequently by the Board of Immigration Appeals (BIA). The applicant failed to depart within the time authorized, was apprehended by Immigration and Customs Enforcement (ICE), and was removed to Mexico on March 7, 2008. The applicant applied for and was issued a U visa in Mexico, and was admitted to the United States on September 6, 2009. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He 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) in order to reside in the United States with his U.S. Citizen father.

The Field Office Director determined the applicant failed to request permission to reapply for admission at a place outside the United States prior to the date of the applicant's application for admission at the port of entry and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated July 22, 2011.

On appeal counsel for the applicant contends the Field Office Director erroneously denied the Form I-212 application because the applicant was granted permission to enter as a non-immigrant upon approval of his Form I-192, Application for Advance Permission to Enter as a Non-immigrant. *Statement on Form I-290B, Notice of Appeal or Motion*, August 19, 2011.

The record contains evidence of removal proceedings, other applications and petitions filed on behalf of the applicant, evidence of birth, marriage, permanent residence, and citizenship, U.S. Federal Income Tax forms, and documents related to the applicant's U visa. The entire record was considered in rendering a decision on appeal.

Section 212(a)(9) of the Act states, in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- 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 five 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) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 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) Exception.- 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 record reflects that the applicant entered the United States without inspection on January 28, 1992. The applicant filed a Form I-485 application to register permanent residence or adjust status (Form I-485) in 1997, which was denied in 1998. *See I-485 decision*, September 26, 1998. The applicant was subsequently placed in removal proceedings and was charged with inadmissibility under section 212(a)(6)(A)(i) for being present in the United States without being admitted or paroled. *See Form I-862 Notice to Appear*, July 20, 2000. On April 7, 2004 an Immigration Judge granted the applicant voluntary departure with an alternate order of removal. *Order of Immigration Judge*, April 7, 2004. The applicant appealed the Immigration Judge's decision, and on May 25, 2005 the BIA affirmed the decision, permitting the applicant 60 days from the date of its order to voluntarily depart the United States, with an alternate order of removal as provided for in the Immigration Judge's order. *BIA decision*, May 25, 2005. The applicant failed to depart within the time period allowed. On October 19, 2006 the applicant was issued a Form I-166 bag and baggage letter, indicating arrangements had been made for the applicant to depart on November 9, 2006. *See Form I-166*, October 19, 2006. On October 5, 2007 the applicant was apprehended by immigration officials, who verified his departure from the United States on March 7, 2008. *See Form I-205, Warrant of Departure / Removal*, March 7, 2008. The applicant was granted non-immigrant U status, as well as permission to enter as a non-immigrant. *See I-192 approval notice*, June 10, 2009, *see also I-918 approval notice*, June 10, 2009. The applicant was subsequently admitted as a non-immigrant into the United States on September 6, 2009, and filed another Form I-485 and Form I-212. The applicant seeks admission within 10 years of his date of departure, and is therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

Although counsel for the applicant asserts the applicant has already obtained permission to reapply for admission after deportation or removal because his Form I-192, application for permission to

enter as a non-immigrant, was granted, this assertion is without merit. The Form I-192 application allows for temporary admission into the United States as a non-immigrant despite inadmissibility, does not waive inadmissibility under section 212(a)(9)(A)(ii), and does not affect the applicant's current request for admission as an applicant for permanent residence. *See INA § 212(d)(3)*.

Section 212(a)(9) of the Act further provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record reflects that the applicant entered without inspection in 1992, and filed a Form I-485 application on December 9, 1997, which was denied on September 26, 1998. The applicant remained in the United States after the 1998 I-485 denial, and accrued unlawful presence from the date of the denial until his departure pursuant to an order of removal on March 7, 2008.¹ As such, the applicant has accrued over one year of unlawful presence, and subsequently left the

¹ It is noted the applicant also accrued unlawful presence from the effective date of the unlawful presence provisions, April 1, 1997, until he filed his I-485 application on December 9, 1997.

United States, which makes him also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant has not applied for a waiver of this inadmissibility.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(9)(B)(i)(II) of the Act. The applicant has not filed for a waiver of this inadmissibility, therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Field Office Director. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.