



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



H9

FILE: [Redacted] Office: Vermont Service Center

Date: MAR 12 2001

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was admitted to the United States as a nonimmigrant visitor on October 19, 1996 with authorization to remain until April 18, 1997. She failed to depart by that date or to apply for and receive an extension of temporary stay. On April 15, 1999, the applicant was apprehended by Service officers. A Notice to Appear was personally served on the applicant on April 15, 1999, as evidenced by her signature in the Certificate of Service Block, ordering her to appear at Immigration Court, 26 Federal Plaza, Room 1000, New York, NY 10278 on May 6, 1999 at 9:00 a.m. In response to a request for change of venue filed in the applicant's case, an immigration judge in New York ordered a change of venue on May 6, 1999 to Hartford, Connecticut. That order listed the applicant's address as 5 Ridge Place, Apt. 3, Stamford, CT 06902 and indicated that she was represented by counsel.

On October 19, 1999, and pursuant to proper notice, an immigration judge in Hartford, Connecticut, ordered the applicant removed from the United States *in absentia*. Therefore, the applicant is inadmissible to the United States under §§ 212(a)(6)(B) and 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(B) and 8 U.S.C. 1182(a)(9)(A)(ii), for having failed to attend a removal proceeding and for having been ordered removed from the United States. The applicant seeks permission to reapply for admission into the United States under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to be able to continue her volunteer work and involvement in her children's school programs.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, the applicant states that she was not aware that she had a removal hearing on October 19, 1999. The applicant states that she had an attorney that charged her money and misrepresented her. The applicant stated that she failed to receive a letter ordering her to appear for departure to Peru on December 2, 1999.

The record contains an envelope which indicates that the Form I-166 letter was sent to the applicant's current address listed above on November 18, 1999 informing her to appear for departure on December 2, 1999. The letter indicates that two attempts were made to deliver that notice before it was returned to the Service on December 9, 1999 marked unclaimed-return to sender. The address on the envelope is the same address as the applicant is using on her notice of appeal.

Section 212(a)(6) ILLEGAL ENTRANTS AND IMMIGRANT VIOLATORS.-

(B) -FAILURE TO ATTEND REMOVAL PROCEEDING.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's the alien's inadmissibility or deportability and

who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

Section 212(a)(6)(B) of the Act, was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). According to the reasoning in Matter of Soriano, 21 I&N Dec. 516 (BIA 1996; A.G. 1997), the provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. Section 212(a)(6)(B) of the Act became effective on April 1, 1997.

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 and no purpose would be served in granting the application.

The record reflects that the applicant is inadmissible to the United States under § 212(a)(6)(B) of the Act for failure to attend her removal proceeding and without reasonable cause. No waiver of such ground of inadmissibility is available for an alien seeking admission to the United States within five years of such alien's subsequent departure or removal. Therefore, the favorable exercise of discretion in this matter is not warranted.

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.