



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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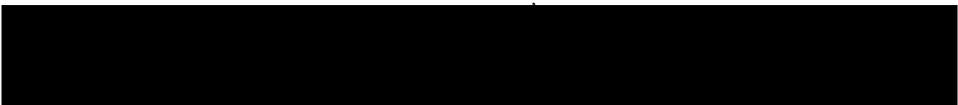
MAR 12 2001

FILE: [Redacted]

Office: Texas Service Center

Date:

IN RE: Applicant:



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.

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

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 Mexico who attempted to procure admission into the United States on January 12, 1998 by falsely claiming to be a United States citizen by presenting a U.S. birth certificate in the name of [REDACTED]. The applicant stated under oath that her true name was [REDACTED] and she was born on February 2, 1976. She was convicted of a violation of 8 U.S.C. 1325 and was placed on probation for three years. The applicant was found to be inadmissible to the United States under § 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 herself as a citizen of the United States and was removed to Mexico on January 12, 1998 pursuant to § 235(b)(1) of the Act, 8 U.S.C. 1225.

On February 9, 1998, the applicant applied for and was issued a nonimmigrant visa by a consular officer while failing to reveal her prior false claim to U.S. citizenship, prior conviction and prior removal from the United States. On March 3, 1998, the applicant applied for admission to the United States as a nonimmigrant visitor at a port of entry. She was referred to secondary inspection where the true facts were revealed. The applicant was found to be inadmissible under § 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i), for having procured a visa and having attempted to procure admission into the United States by fraud or willful misrepresentation. On March 10, 1998, the applicant was convicted of a violation of 8 U.S.C. 1325(a)(3): knowingly, willfully and in violation of law attempting to gain illegal entry into the United States by presenting an invalid visa. She was placed on probation for three years. The applicant was removed from the United States on March 11, 1998.

The applicant married a U.S. citizen in January 1999 in Mexico and seeks permission to reapply for admission under § 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin her spouse.

Citing 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), the director determined that the applicant is mandatorily inadmissible to the United States for having falsely represented herself as a United States citizen after March 31, 1997 and no waiver is available for such a violation. The director then denied the application accordingly.

On appeal, the applicant's husband states that he cannot agree with the reasoning of the decision but supports his wife. The applicant states that his wife is not a criminal and she only followed her heart. The applicant's husband states that they have been separated for more than one year and that is sufficient penalty for her offense.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are

inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(9) ALIENS PREVIOUSLY REMOVED.-

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(i) ARRIVING ALIENS.-Any alien who has been ordered removed under § 235(b)(1) [1225] or at the end of proceedings under § 240 [1229a] 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) OTHER ALIENS.-Any alien not described in clause (i) who-

(I) has been ordered removed under § 240 [1229a] 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 continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(A)(i) of the Act relates to aliens who have been removed through expedited removal proceedings (accomplished only upon a finding of inadmissibility under § 212(a)(6)(C) or § 212(a)(7) of the Act and upon the serving of a Form I-860, Notice and Order of Expedited Removal, upon the alien), or (if any additional grounds of inadmissibility are considered, the alien must be referred to an immigration judge pursuant to § 235(b)(2) and § 240 of the Act) following removal proceedings before an immigration judge initiated on the alien's arrival in the United States and who have actually been removed.

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

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) FALSELY CLAIMING CITIZENSHIP.-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 § 274A [1324a]) or any other Federal or State law is inadmissible.

Section 212(i) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a) (6) (C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a) (6) (C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a § 212(a) (6) (C) (i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, Interim Decision 3289 (BIA, A.G. 1996).

The record contains a Form I-860 which reflects that the applicant was determined to be inadmissible under § 212(a) (6) (C) (ii) of the Act on January 12, 1998 for having falsely represented herself as a United States citizen. Since no waiver of such ground of inadmissibility is available, she is mandatorily inadmissible to the United States. No purpose would be served in granting the present application, and a 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.