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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



FILE:

Office: Helena

Date:

MAR 13 2001

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:

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

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

DISCUSSION: The application was denied by the District Director, Helena, Montana, 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 was present in the United States without a lawful admission or parole on June 28, 1991. She was removed from the United States on May 21, 1997. Therefore she is inadmissible under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii).

The applicant was present in the United States again without a lawful admission or parole shortly thereafter and without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). The applicant married a United States citizen on September 26, 1997, in Idaho Falls, Idaho. 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 remain with her husband.

The district director determined that the applicant was statutorily ineligible for any relief pursuant to § 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5), and denied the application accordingly.

On appeal, the applicant states that she has been in the United States for two and one-half years, she is married to a U.S. citizen and they have a daughter together. The applicant states that she did not have an interpreter at her court hearing and feels that she did not have a chance to defend herself properly.

Section 241(a) DETENTION, RELEASE, AND REMOVAL OF ALIENS ORDERED REMOVED.-

(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.-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 [chapter], and the alien shall be removed under the prior order at any time after reentry.

8 C.F.R. 241.8 provides that an alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances.



The record reflects that the applicant has reentered the United States without permission to reapply for admission, thereby causing the deportation order to be reinstated. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether or not he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

The Service holds that an alien whose prior order of removal has been reinstated is ineligible for any relief while he or she remains in the United States. However, after the alien departs from the United States § 241(a)(5) of the Act no longer applies.

ORDER: The appeal is dismissed.