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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

FILE [REDACTED] Office: Phoenix

Date: MAR 12 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: Self-represented

PUBLIC COPY

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 which 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, Phoenix, Arizona, 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 was initially present in the United States without a lawful admission or parole in July 1986. On April 9, 1998, the applicant applied for admission into the United States by presenting a Border Crossing Card, Form I-586, belonging to [REDACTED]. Upon further questioning, the applicant stated that her true name was [REDACTED]. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud. Therefore, she needs to obtain a waiver of that ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), on Form I-601.

She was removed from the United States on April 9, 1998, under section 235(b)(1)(A)(i) of the Act, 8 U.S.C. § 1225(b)(1)(A)(i). Therefore, she is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered expeditiously removed from the United States. The record reflects that 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 section 276 of the Act, 8 U.S.C. § 1326 (a felony).

On September 9, 1998, the applicant applied for and was issued advance parole on Form I-512 to travel to Mexico. She departed and was paroled into the United States on December 9, 1998. Her departure triggered her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States after April 1, 1997. Therefore, she needs to obtain a waiver of that ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), on Form I-601.

The applicant married a lawful permanent resident on October 30, 1988, in California and she is the beneficiary of an approved 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), on Form I-212.

The district director determined that no purpose would be served in approving the application and denied the application accordingly.

On appeal, the applicant states that she was the beneficiary of a Petition for Alien Relative which was approved in June 1992 and prior to her removal. She states that she is the mother of two United States citizen children and consideration should be based on weighing the favorable factors due to the fact that her children are minors. The applicant states that separation will cause tremendous emotional suffering.

Service instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien who has been ordered removed and has entered the United States on or after April 1, 1997, without being admitted.

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 Secretary has consented to the alien's reapplying for admission.

An alien inadmissible under section 212(a)(9)(C)(i)(I) of the Act is permanently inadmissible but may seek consent to reapply for admission after he/she has been outside the United States for 10 years.

An alien inadmissible under section 212(a)(9)(C)(i)(II) of the Act is permanently inadmissible but may seek consent to reapply for admission after he/she has been outside the United States for 10 years. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry must have occurred on or after April 1, 1997.

The record reflects that the applicant was removed on April 9, 1998. She reentered the United States without being admitted shortly thereafter. She is, therefore, mandatorily inadmissible because 10 years have not elapsed since her last departure. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.