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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

MAY 16 2003

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

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)(C) of the Immigration and Nationality Act; 8 U.S.C. § 1182(a)(9)(C)

ON BEHALF OF APPLICANT: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 that 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 waiver application was denied by the Director, Nebraska Service Center, and 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. On January 9, 1999, the applicant was ordered removed from the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(7)(A)(A)(i)(I), as an alien who at the time of her application for admission, was not in possession of a valid entry document. The applicant was advised in writing that she was prohibited from entering, attempting to enter, or being in the United States (U.S.) for a period of 5 years from the date of her departure. *See* Form I-296 Notice to Alien Removed/Departure Verification (Form I-296) signed by the applicant on January 9, 1999. The evidence in the record indicates, however, that the applicant re-entered the United States without admission within 5 years of her removal. The record reflects that the applicant married a U.S. citizen in Chicago, Illinois on December 11, 1999. The record indicates further that the applicant has been residing illegally in the United States since at least June 1999.

Based on the evidence in the record, the director found that the applicant was inadmissible to the United States pursuant to sections 212(a)(9)(C)(i)(I) and 212(a)(9)(C)(i)(II) of the Act, in that she was unlawfully present in the United States for an aggregate period of more than 1 year and because she re-entered the U.S. without admission subsequent to being ordered removed. The applicant seeks permission to reapply for admission pursuant to section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii).

On appeal, counsel submitted affidavits written by the applicant and her husband (Mr. [redacted] discussing their desire to be together in the United States.[1] Counsel additionally submitted a copy of the first page of the applicant's Mexican passport, obtained on January 4, 2002, in Chicago, Illinois. Counsel also submitted photos of the applicant and Mr. [redacted] as well as employment and earnings information for Mr. [redacted]

Section 212(a)(9)(C) of the Immigration and Nationality Act states, in pertinent part:

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[1] In her affidavit, the applicant attempts to contest the basis of her January 1999, removal from the United States. The AAO will not address or consider these arguments, as it has no jurisdiction to do so and all claims pertaining to the applicant's removal from the U.S. should have been raised at the time of the applicant's expedited removal proceedings. *See* 8 C.F.R. § 235.3(2) (2002).

(C) Aliens unlawfully present after previous immigration violations. -

(i) In general. - 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) Exception. - 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 alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission . . . .

The evidence in the record clearly indicates that subsequent to her removal from the U.S. on January 9, 1999, the applicant re-entered the United States without admission. Both the applicant's and her husband's January 2002, affidavits state that they were married in Chicago, Illinois, in December 1999, and that the two have continuously lived together in Chicago since their marriage. Indeed, Mr. [redacted] affidavit states that the applicant has resided continuously with him in Chicago since June 1999. Moreover, the fact that the applicant's Mexican passport was obtained in Chicago on January 4, 2002, is further evidence that the applicant re-entered the U.S. without admission and that she has resided illegally in the United States for more than one year. Based on the evidence, this office finds that the applicant was properly found to be inadmissible pursuant to section 212(a)(9)(C) of the Act.

The applicant clearly did not comply with the requirement that she remain outside of the United States for five consecutive years after the date of her removal. *See* 8 C.F.R. § 212.2(a) (2002). Moreover, because the applicant re-entered the U.S. without admission and has been unlawfully present in the U.S. for more than one year subsequent to being ordered removed, she is subject to an additional 10-year bar on her admission into the U.S. The applicant's, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) can therefore only be filed after the applicant

has been outside of the U.S. for at least 10 years subsequent to her removal from the U.S.

In *Matter of Martinez-Torres,* 10 I&N Dec. 776 (BIA 1964), the BIA held that in the case of an applicant who is mandatorily inadmissible to the U.S. no purpose would be served in adjudicating or granting an application for permission to reapply for admission into the United States.

A review of the documentation in the record reflects that at this time, the applicant is mandatorily inadmissible to the United States. The director's denial of her application was therefore proper.

ORDER: The appeal is dismissed.