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**U.S. Citizenship
and Immigration
Services**



HW

FILE:

Office: CALIFORNIA SERVICE CENTER, CA

JUL 23 2004
Date:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wienmann
Robert P. Wienmann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. The record reflects that on February 14, 1997, at the Calexico, California port of entry the applicant attempted to smuggle 50.15 lbs of marijuana into the United States. The applicant was paroled into the United States for prosecution. On February 25, 1997, the applicant was ordered excluded and deported by an immigration judge under section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(2)(C) for being an illicit trafficker of a controlled substance. The applicant is inadmissible to the United States because she falls within the purview of sections 212(a)(2)(C) and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(C) and 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant now 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) in order to obtain a nonimmigrant visa.

The director determined that the applicant did not file the Application for Permission to Reapply After Deportation (Form I-212) with the American Consulate in Tijuana, Mexico as required and denied the application accordingly. *See Director's Decision* dated November 20, 2002.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

.....
(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law . . . [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 contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record reflects that the applicant filed Form I-212 with the Immigration and Naturalization Service office (now known as Citizenship and Immigration Service (CIS)) in San Diego, California.

The regulation at 8 C.F.R. § 212.2 states in pertinent part:

(b) Alien applying to consular officer for nonimmigrant visa or nonresident alien border crossing card.

(1) An alien who is applying to a consular officer for a nonimmigrant visa or a nonresident alien border crossing card, must request permission to reapply for admission

to the United States if five years, or twenty years if the alien's deportation was based upon a conviction for an aggravated felony, have not elapsed since the date of deportation or removal. This permission shall be requested in the manner prescribed through the consular officer, and may be granted only in accordance with sections 212(a)(17) and 212(d)(3)(A) of the Act and Sec. 212.4 of this part. However, the alien may apply for such permission by submitting Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, to the consular officer if that officer is willing to accept the application, and recommends to the district director that the alien be permitted to apply.

The regulation at 8 C.F.R. 212.4 states in pertinent part:

(a) Applications under section 212(d)(3)(A) --

(1) General. District directors and officers in charge outside the United States in the districts of Bangkok, Thailand; Mexico City, Mexico; and Rome, Italy are authorized to act upon recommendations made by consular officers for the exercise of discretion under section 212(d)(3)(A) of the Act.

The regulation at 8 C.F.R. 103.2 states in pertinent part:

Applications, petitions, and other documents.

(a) *Filing-(1) General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7...

On appeal the applicant states that she applied for a "visa laser" at the American Consulate in Tijuana in January 2002 and that at that time she did not deny her inadmissibility. On appeal the applicant does not explain why she filed the Form I-212 with the San Diego office instead of the American Consulate in Tijuana.

Since the application was not properly filed it may not be approved. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The decision is without prejudice to the filing of a new Form I-212 with the appropriate American Consulate that has jurisdiction over the applicant's place of residence.

ORDER: The appeal is dismissed.