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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

JUN 7 2004

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

IN RE: [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

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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared moot.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a legal permanent resident of the United States and 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 reside with her husband and children.

The director determined that the extended period of time before a visa number would become available to the applicant outweighed her equities in the United States and denied the application accordingly. *Decision of the Director*, dated August 29, 2003.

On appeal, the applicant asserts that she erroneously entrusted another individual to obtain immigration documents on her behalf. The applicant apologizes for her mistake and states that she did not intend to violate the laws of the United States. *Attachment to Form I-290B*, dated September 18, 2003. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> (i) Arriving aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 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) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . 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 the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The AAO finds that the applicant was removed from the United States approximately 11 years ago and is therefore no longer inadmissible under section 212(a)(9)(A) of the Act. Further, the applicant offers evidence of reformation and rehabilitation from her disregard for the immigration laws of this country through compliance with the terms of her removal.

The AAO notes that the applicant's fraudulent misrepresentations to immigration inspectors render the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and require the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601).

A clear reading of the law reveals that the applicant is not inadmissible under section 212(a)(9)(A) of the Act. She, therefore, does not need permission to reapply for admission, so the appeal will be dismissed, the decision of the director will be withdrawn and the application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the application is declared moot.