

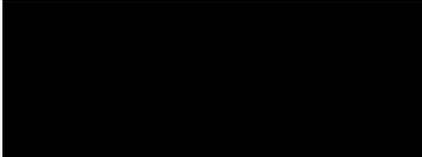
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U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JUN 25 2004

IN RE:

Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(C)(ii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, was denied by the Director, Nebraska Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who attempted to gain entry into the United States on May 5, 1999. The U.S. Border Patrol apprehended the applicant and after being fingerprinted she was returned to Mexico. The record reflects that the applicant reentered the United States after her removal on or about May 10, 1999, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1326. The applicant is therefore inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C § 1182(a)(9)(C)(i)(I) for having been unlawfully present in the United States after a previous immigration violation. The applicant is the beneficiary of an approved petition for alien relative filed by her Lawful Permanent Resident (LPR) father. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. 1182(a)(9)(C)(ii).

The Director determined that the applicant is inadmissible under Section 212(a)(9)(C) of Act she is not eligible and may not apply for any relief since 10 years have not passed since her last departure and denied the Form I-212 accordingly. *See Director's Decision* dated October 17, 2003.

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

(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 [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

- (A) removal;
- (B) departure from the United States;
- (C) reentry or reentries into the United States; or
- (D) attempted reentry into the United States.

To recapitulate, the applicant states that on May 5, 1999, she attempted to gain entry into the United States, was apprehended by the Border Patrol and after being fingerprinted she was returned to Mexico. On or about May 10, 1999, she entered the United States without a lawful admission or parole and without permission to reapply for admission and has resided here since that date. She is therefore subject to section 212(a)(9)(C)(i)(I) of the Act.

On appeal the applicant states that she attempted to enter the United States in 1999, at the age of 16, because her mother had passed away on May 31, 1997, and her father resided in the United States and she was alone in Mexico. She asks for her case to be reconsidered because if she needs to wait 10 years to reapply she may not be able to see her father again. In addition the applicant states that Citizenship and Immigration Services (CIS) made mistakes regarding dates in reference to her case. The dates the applicant refers to are dates that the law applicable to her case was enacted.

Notwithstanding the arguments on appeal the applicant is subject to the provisions of section 212(a)(9)(C)(i)(I) of the Act, which is very specific and applicable. The applicant is not eligible to apply for any relief under this Act unless 10 years pass after the date of her last departure from the United States and the Secretary has consented to the alien's reapplying for admission. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.