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U.S. Citizenship
and Immigration
Services

H4

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [REDACTED]

MAR 26 2004

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:

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 after deportation or 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 who attempted to procure admission into the United States on November 11, 1997 at the San Ysidro, California port of entry by concealing herself behind the seat of a vehicle. The applicant was found inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document. Consequently, on November 13, 1997 the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. The record reflects that the applicant was present in the United States without a lawful admission or parole on December 24, 1997 and without permission to reapply for admission in violation of § 276 of Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 remain in the United States and reside with her spouse and children.

The director determined that section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief. The Director then denied the application accordingly. *See Director Decision* dated July 15, 2003.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 five 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) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel states that the applicant's motive in coming to the United States was to be reunited with the man she loved and to have their daughter grow up with both parents. Counsel states that the applicant concedes that she broke the law but at the time she was a young mother. She further states that the applicant's spouse is starting a residency at the Riverside County Regional Medical Center in Riverside and if her application is denied her spouse would have to care for their three children and work at the same time. Furthermore counsel states that the applicant has lived in the United States in full compliance with this country's laws with the exception of her illegal entry.

The applicant was removed to Mexico on November 13, 1997 and reentered illegally on December 24, 1997. She has never been granted permission to reapply for admission and therefore she is subject to the provision of section 241(a)(5).

Section 241(a) detention, release, and removal of aliens ordered removed.-

(5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

Notwithstanding the arguments on appeal, section 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provision of section 241(a)(5) of the Act, and she is not eligible for any relief under this Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.