



U.S. Citizenship
and Immigration
Services

H4



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: 01/14/09
IN RE: Applicant: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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

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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

Administrative Appeals Office
Department of Homeland Security
Washington, DC 20529

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, 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 a citizen of Mexico who was present in the United States without a lawful admission or parole on April 1, 1991. The applicant applied for asylum in December 1, 1995, with the Immigration and Naturalization Service (now Citizenship and Immigration Services, (CIS)). On January 16, 1996, an asylum officer interviewed the applicant for asylum status and she was referred to an Immigration Judge for a court hearing. The record reflects that on April 11, 1996, an Immigration Judge granted the applicant voluntary departure until July 11, 1996. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on November 6, 1996, and was granted voluntary departure until December 5, 1996. The applicant failed to surrender for removal or depart from the United States and a Warrant of Deportation was issued on January 2, 1997. The applicant's failure to depart on or prior to December 5, 1996, changed the voluntary departure order to an order of deportation. The record further reveals that the applicant departed the United States in October 1997. The applicant reentered the United States in 1999 without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 remain in the United States and reside with her Lawful Permanent Resident (LPR) spouse and U.S. citizen 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's Decision* dated February 4, 2004.

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

(A) Certain alien 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, 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 alien's reapplying for admission.

On appeal the applicant states that she did not depart the United States on or before December 5, 1996, the date her voluntary departure order expired, due to medical problems her U.S. citizen child was facing at the time. The applicant admits that she reentered the United States in 1999 without a lawful admission or parole and without permission to reapply for admission because she was pregnant and needed medical treatment.

The applicant has never been granted permission to reapply for admission, therefore the warrant of deportation is reinstated and the applicant is subject to the provision of section 241(a) (5) of the Act, which states:

Section 241(a) detention, release, and removal or 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.