



U.S. Citizenship
and Immigration
Services



1724

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

08/07/05

IN RE:

Applicant:



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.

The applicant is a native and citizen of Mexico who on April 21, 2002, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented a Form DSP-150 (USA B1/B2 VISA/BCC) that did not belong to her. The applicant was found inadmissible pursuant to 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 admission into the United States by fraud, and section 212(a)(7)(A)(i)(I) of 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 other valid entry document. Consequently, on April 21, 2002, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States on an unknown date, but prior to February 26, 2004, the date she married a U.S. citizen, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 travel to the United States and reside with her U.S. citizen spouse and child.

The Director determined that the applicant was inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), and is not eligible and may not apply for any relief since 10 years have not passed since her last departure. In addition, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated August 15, 2005.

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.

On appeal, the applicant's spouse submits a declaration from the applicant and himself, copies of the applicant's child's birth certificate and passport, photographs of his home in California and photographs of their home in Mexico, a copy of the applicant's father's alien registration card, copies of country conditions in Mexico and numerous letters of recommendation from the applicant's relatives and friends regarding her character. In his declaration the applicant's spouse states that he met the applicant in late 2003, and after they got married they moved to Mexico in order to rectify her immigration status. In addition, he states that the applicant has never been arrested, with the exception of her expedited removal. The applicant's spouse further states that the family is suffering a tremendous amount of hardship, danger and stress while residing in Mexico. The applicant's spouse states that he commutes daily from Mexico to the United States and he asserts that his life is in danger due to the country conditions in Mexico. Furthermore, he states that the applicant's father resides in the United States and the applicant has a responsibility to assist him because of his illness. In her statement, the applicant states that although she knew that her actions were not right, she entered the United States in order to assist her terminally ill mother. In addition, the applicant states that her spouse has had difficulties with Mexican commuters and because he is a U.S. citizen he is in constant danger of being kidnapped or held for ransom. Furthermore, the applicant states that she is not a criminal and requests that she be given an opportunity to enter the United States in order to take care of her sick father and raise her child in the United States.

Before the AAO can adjudicate the appeal and weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for any relief under the Act.

To recapitulate, the applicant was expeditiously removed from the United States on April 21, 2002. She reentered the United States shortly after her removal without a lawful admission or parole, and without permission to reapply for admission, married a U.S. citizen on February 26, 2004 and returned to Mexico on an unknown date after her marriage. Because the applicant reentered the United States after her April 21, 2002, removal she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act.

As noted above, an alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless the alien is seeking admission more than ten years after the date of the alien's last departure. Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying

for admission. In the present matter, the applicant's last departure from the United States occurred after her February 26, 2004 marriage, less than ten years ago.

The applicant is subject to the provisions of section 212(a)(9)(C)(i) of the Act and does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly the appeal will be dismissed.

DECISION: The appeal is dismissed.