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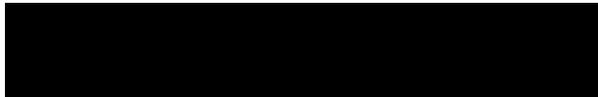


Office: CALIFORNIA SERVICE CENTER

Date: JUL 15 2005

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 after 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 and the application declared unnecessary.

The applicant is a native and citizen of Mexico who on July 13, 1996, at the Calexico, California port of entry applied for admission as a nonimmigrant visitor for pleasure. The applicant was driving a car in which 160.30 pounds of marijuana were found. The applicant was found inadmissible under section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(2)(C) for being an illicit trafficker of a controlled substance and section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed an act in violation of law or regulation relating to a controlled substance. On the same date the applicant was served with a Notice to Appear for a hearing before an Immigration Judge and was allowed to return to Mexico with instructions to appear for an exclusion hearing at a later date. On September 16, 1996, the applicant failed to appear for a hearing and the Immigration Judge administratively closed the case, pursuant to *Matter of Sanchez*, 21 I&N Dec. 3283 (BIA 1996). The applicant 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 as a nonimmigrant visitor.

The Director determined that the applicant is not eligible for any exception or waiver of the Act and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. See *Director's Decision* dated October 20, 2004.

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

(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 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 alien 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.

On appeal the applicant states that she is aware of her past errors but eight years have passed since the incident occurred, she has a stable career, a family and a two-year-old son. She requests that her permission to reapply be granted in order to be able to travel to the United States with her family as a visitor for pleasure.

The AAO finds the Director erred in finding that section 212(a)(9)(A) of the Act applies in this case. In *Matter of Sanchez, supra*, the court held that by directing an applicant for admission to return to Mexico after being served with a Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122), the Service in effect consented to the alien's withdrawal of that application when the alien elected not to return to pursue his application for admission to the United States.

As noted above the applicant in the present case was issued a Form I-122 and was instructed to return to Mexico to wait for her exclusion proceedings. By terminating the exclusion proceedings the Immigration Judge considered the applicant's application for admission withdrawn. A final order of removal has never been issued on behalf of the applicant. She is thus not inadmissible pursuant to section 212(a)(9)(A) of the Act and a Form I-212 is not necessary.

The AAO notes that the applicant may be inadmissible under sections 212(a)(2)(C) and 212(a)(2)(A)(i)(II) of the Act. The proceeding in the present case is for the application for permission to reapply for admission into the United States after deportation or removal and therefore the AAO will not discuss the applicant's possible inadmissibility under other sections of the Act.

The application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act is unnecessary as the applicant is not inadmissible pursuant to section 212(a)(9)(A) of the Act.

ORDER: The appeal is dismissed and the application declared unnecessary.