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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAR 09 2005**

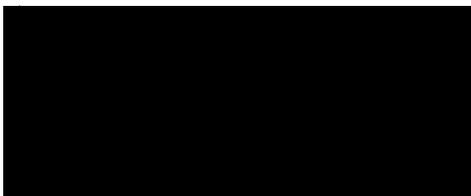
IN RE:

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:



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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn, the appeal will be dismissed and the application declared moot.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on or about June 30, 1994. On September 1, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Resident (Form I-130) filed by her U.S. citizen spouse. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant filed a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to remain in the United States and reside with her spouse and children. The waiver application was denied by the District Director, Helena, Montana on July 11, 2001, and an appeal was dismissed by the AAO on October 16, 2002. The applicant filed an Application for Permission to Reapply for Admission After Removal (Form I-212) on March 10, 2004.

The Director determined that the applicant is inadmissible under Section 212(a)(9)(C) of Act and denied the Form I-212 accordingly. *See Director's Decision* dated April 26, 2004.

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 has consented to the alien's reapplying for admission. 14a/ 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--

The record indicates that the applicant entered the United States without inspection on or about June 30, 1994, and filed a Form I-485 on September 1, 1999. The record further reflects that an Authorization for Parole of an Alien into the United States (Form I-512) was issued to the applicant on November 30, 1999. The applicant departed the United States on an unknown date after the issuance of the Form I-512 and was paroled into the United States on January 5, 2000. It was this departure to Mexico that triggered her unlawful presence.

A March 31, 1997 memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, regarding the implementation of section 212(a)(6)(A) and 212(a)(9) grounds of inadmissibility states in pertinent part:

“Pursuant to section 212(a)(9)(C) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or sought to enter the United States without inspection are permanently inadmissible. The statute makes an exception for aliens who seek admission more than 10 years after their last departure who have obtained advance consent from the Attorney General to reapply for admission. **This ground of inadmissibility applies only to aliens who have attempted to re-enter or actually have re-entered the United States without being inspected and admitted or paroled.**” (Emphasis added).

The AAO finds the director erred in finding the applicant inadmissible under 212(a)(9)(C) of the Act. The applicant was paroled into the United States on January 5, 2000, after her departure and therefore she is not inadmissible pursuant to section 212(a)(9)(C) of the Act and a Form I-212 application is not necessary. Accordingly, the application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act is moot as the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act.

ORDER: The Director's decision is withdrawn and the appeal is dismissed.