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U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 07 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 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 June 26, 1998, at the Nogales Arizona Port of Entry applied for admission into the United States. The applicant presented a Border Crossing Card (Form I-586) 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. Consequently on the same day 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). On July 9, 2002, during an interview with an immigration officer the applicant admitted under oath having reentered the United States on June 29, 1998, 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). On the same day a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and the applicant was removed to Mexico. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 to reside with her U.S. citizen spouse.

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 and denied the Form I-212 accordingly. *See Director's Decision* dated September 8, 2004.

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 aliens 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 aliens is not eligible and may not apply for any relief under this Act [chapter], and the aliens shall be removed under the prior order at any time after reentry.

On appeal, filed by the applicant's spouse, he states that the applicant has no criminal convictions other than reentering without permission and he asks to reconsider the judgment. The applicant's spouse submits a letter from his mother in which she states that he is suffering from depression due to the separation from his spouse. In addition the applicant's spouse states that the applicant is deeply sorry for what she has done and requests an opportunity to prove herself as a worthy individual. Furthermore he submits a letter from a doctor that states that he suffers from a mood disorder, which is caused by the absence of the applicant.

The AAO finds the director erred in finding that section 241(a)(5) of the Act applies in this case since the record of proceedings does not reflect that the applicant re-entered the United States after the reinstatement of her removal order and her second removal on July 9, 2002. The applicant states that she lives in Mexico and there is no documentary evidence to show otherwise. Although the applicant is not subject to section 212(a)(5) of the Act, she is clearly inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C § 1182(a)(9)(C)(i)(I).

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.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

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) 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.

To recapitulate, the applicant was expeditiously removed from the United States on June 26, 1998. By her own admission she reentered the United States on June 29, 1998, without a lawful admission or parole and without permission to reapply for admission and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on June 6, 2001.

Because the applicant reentered the United States after her June 26, 1998, removal without a lawful admission or parole and without permission to reapply for admission, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, for having been unlawfully present in the United States after a previous immigration violation.

The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. The applicant is not eligible to apply for any relief under this Act unless 10 years pass after the date of her last departure from the United States and the Secretary has consented to the alien's reapplying for admission. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.