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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 28 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 March 10, 1999, at the San Ysidro, California, Port of Entry attempted to elude inspection in order to gain entry into the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (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, 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 12, 2002, during an interview with an immigration officer the applicant admitted under oath having reentered the United States in March 1999, 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 and 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 and denied the Form I-212 accordingly. *See Director's Decision* dated October 29, 2004.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is not signed by an attorney or an accredited representative. Therefore the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28.

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.

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 12, 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) of the Act, 8 U.S.C § 1182(a)(9)(C).

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) 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.

To recapitulate, the applicant was expeditiously removed from the United States on March 10, 1999. By her own admission she reentered the United States on or about March 15, 1999, without a lawful admission or parole and without permission to reapply for admission. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on May 11, 2001. Since the applicant reentered the United States after her March 10, 1999, removal, without a lawful admission or parole and without permission to reapply for admission, she is inadmissible pursuant to section 212(a)(9)(C) 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. In the present matter, the applicant's last departure from the United States occurred in 2002, considerably less than ten years ago. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.