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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: APR 07 2006

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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 Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The Director's decision will be withdrawn, the appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on April 4, 1997. On the same day the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) apprehended the applicant and a Notice to Appear (NTA) for a removal hearing before an immigration judge was issued. On February 5, 1998, an immigration judge found the applicant removable pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(A)(i) for having been present in the United States without being admitted or paroled, and granted her voluntary departure until June 5, 1998, in lieu of removal. The record of proceedings reveals that the applicant departed the United States on June 4, 1998. The record further reflects that the applicant reentered the United States approximately one year after her departure, without a lawful admission or parole. 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 remain in the United States and reside with her Lawful Permanent Resident (LPR) spouse and U.S. citizen children.

The Acting Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the application accordingly. *See Acting Director's Decision* dated August 2, 2004.

On appeal, counsel submits a brief, a statement from the applicant, copies of country conditions for Guatemala, copies of the applicant's children's birth certificates, copies of medical records and proof of the applicant's departure prior to the expiration of the voluntary departure order. In his brief counsel states that the applicant has been married to a LPR for 13 years, she has two U.S. citizen children, one of whom was born prematurely and that the country conditions in Guatemala will make it difficult for the applicant's children to receive adequate education, proper medical treatment and sufficient protection. In addition, counsel states that the applicant complied with the immigration judge's order and departed within the period of voluntary departure. Furthermore, counsel states that the applicant's children should not be deprived of the opportunities other U.S. citizens are entitled to. The applicant states that she left the United States based on the immigration judge's order but returned because she was despondent and sad without her husband, and could not bear the thought that her children would either be living without a mother or without a father.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether a Form I-212 is necessary. As noted above, an immigration judge granted the applicant voluntary departure until June 5, 1998. The documentation in the record of proceedings reveals that the applicant departed the United States on June 4, 1998, prior to the expiration of the voluntary departure order. Therefore, the AAO finds that the applicant is not inadmissible pursuant to section 212(a)(9)(A) of the Act and a Form I-212 pursuant section 212(a)(9)(A)(iii) of the Act is not necessary. As such, the issue of whether the unfavorable factors in the applicant's case outweigh the favorable factors is pointless and will not be addressed.

Accordingly, the Acting Director's decision will be withdrawn, the appeal will be dismissed and the Form I-212 will be declared unnecessary as it has been established that the applicant is not inadmissible under section 212(a)(9)(A) of the Act.

ORDER: The Acting Director's decision is withdrawn, the appeal is dismissed and the application declared unnecessary.