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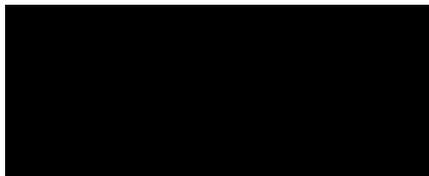
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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 2006**

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, Chief
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 was expeditiously removed from the United States on three occasions. On May 8, 1999, at the San Ysidro, California, Port of Entry, California, Port of Entry, she presented an Alien Registration Card (Form I-551) that did not belong to her in an attempt to procure admission into the United States. 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, and section 212(a)(7)(A)(i)(I) of 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, on the same date she was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On May 11, 1999, again at the San Ysidro Port of Entry, the applicant presented a Border Crossing Card (Form I-186) that did not belong to her. She was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and section 212(a)(7)(A)(i)(I) of the Act, and she was expeditiously removed on May 12, 1999 pursuant to section 235(b)(1) of the Act. On May 15, 1999, at the Tecate, California, Port of Entry she again attempted to enter the United States by presenting a Form I-186 that did not belong to her. For the third time she was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and section 212(a)(7)(A)(i)(I) of the Act, and as a result she was expeditiously removed from the United States. The record reveals that the applicant reentered the United States on an unknown date 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). The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by her U.S. citizen son. 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 and reside with her LPR spouse and U.S. citizen son.

The Director determined that the applicant was inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C) for being unlawfully present in the United States after a previous immigration violation. In addition, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated August 29, 2005.

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-

. . . .

(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.

On appeal, the applicant submits copies of a Receipt Notice for Form I-130, her marriage certificate, her birth certificate, her son's birth certificate and certificate of naturalization, and her spouse's Form I-551. The applicant states that she is the mother of a U.S. citizen and wife of an LPR and both need her as much as she needs them. In addition, the applicant states that her son has filed a Form I-130 on her behalf in order to return to the United States. The applicant further states that she has never been convicted of any crime, and never relied on public assistance. Additionally, the applicant states that she has shown "excellent" moral character and if she is not allowed to immigrate to the United States the hardship her family would suffer is indescribable.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. To recapitulate, the applicant was expeditiously removed from the United States three times and reentered the United States without a lawful admission or parole, and without permission to reapply for admission. Because of the applicant's attempts to procure admission after her immigration violations and her illegal reentry after her third removal, she is clearly inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

An alien who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not apply for consent to reapply unless more than ten years have elapsed since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying for admission. It is unclear exactly when the applicant last departed, but it appears to be no earlier than her last removal on May 15, 1999, less than 10 years ago. The applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.