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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 25 2006

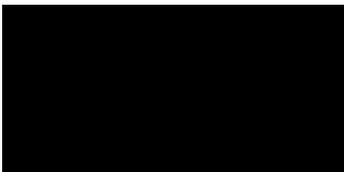
IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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

The applicant is a native and citizen of the Dominican Republic who on August 18, 1987, was granted Lawful Permanent Resident (LPR) status. On March 19, 1993 in the Passaic County Superior Court, County of Passaic, the applicant was convicted of the offense of receiving stolen property in the 3rd degree, and she was sentenced to 180 days imprisonment and five years probation. On November 4, 1996, in the Hudson County Superior Court, County of Hudson, the applicant was convicted of the offense of receiving stolen property in the 3rd degree, and she was sentenced to 364 days imprisonment and five years probation. In addition, the record reflects that on October 4, 1990, the applicant was convicted of the offense of shoplifting and was sentenced to one year probation and a \$275 fine. On October 9, 1991, she was again arrested for shoplifting, convicted and fined. The record further reflects that the applicant was arrested several more times for shoplifting but the dispositions of those arrests are unknown. On March 12 1999, the applicant applied for admission into the United States as a returning permanent resident. Based on her criminal record the applicant was served with a Notice to Appear (NTA) for a removal hearing before an immigration judge. On March 29, 1999, an immigration judge ordered the applicant removed from the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. Consequently, on April 13, 1999, the applicant was removed from the United States. The applicant is seeking 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 U.S. citizen child.

The Director determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and that she is not eligible for any exceptions or waivers under the Act. The Director then denied the Form I-212 accordingly. See *Director's Decision* dated August 12, 2005.

On appeal, counsel states that the Director erroneously denied the Form I-212. Counsel states that the applicant was statutorily eligible for the relief sought because more than five years have elapsed since the date of her removal. In addition, counsel states that none of the applicant's convictions can be deemed to be aggravated felonies and he did not consider the applicant's favorable factors, such as her family ties in the United States and her prior employment history. Additionally, counsel states that the Director erred in stating that the applicant is not eligible for any exception or waiver under the Act because of her convictions. Finally, counsel states that the applicant is eligible to file a waiver under section 212(h) of the Act and the applicant can establish that her U.S. citizen child would be suffer extreme hardship if the Form I-212 is denied.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

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 Secretary has consented to the alien's reapplying for admission.

To recapitulate, the applicant was removed from the United States on April 13, 1999. The record of proceedings does not reflect that the applicant re-entered or attempted to reenter the United States after her removal. Counsel, states that the applicant resides in the Dominican Republic and there is no documentary evidence to show otherwise. It has now been more than five years since the applicant's date of removal. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

The AAO notes that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of crimes involving moral turpitude. Since the applicant was not convicted of an aggravated felony, she may be eligible to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(h) of the Act, 8 U.S.C. § 1182(h) if a Petition for Alien Relative (Form I-130) is filed on her behalf and the applicant can show that she has a qualifying family member in order to file a Form I-601.

ORDER: The appeal is dismissed and the application is declared unnecessary.