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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN ANTONIO

Date:

AUG 07 2008

IN RE:



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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Antonio, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who, on March 2, 2005, filed the Form I-212. She 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 family.

The district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for being an alien who is seeking admission after having been removed from the United States. In addition, the district 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 for any relief or benefit from her Form I-212. Finally, the district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1192(a)(9)(C), for having reentered the United States without admission after having been removed, finding that the applicant was statutorily ineligible for a waiver because it had been less than ten years since her last departure from the United States. The district director then denied the Form I-212 accordingly. *See District Director's Decision* dated July 7, 2005.

On appeal, the applicant contends that she has lived and worked in the United States for many years. *See Form I-290B*, dated July 22, 2005. On appeal, the applicant only submitted the above-referenced Form I-290B. The entire record was reviewed in rendering a decision in this case.

The AAO finds that there is insufficient evidence in the record to determine that the applicant is inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act and she is, therefore, not required to receive permission to reapply for admission at this time.

Section 212(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.
- (ii) Other aliens.-Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10

years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on a 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.

(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 Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary 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.

Section 241(a) of the Act states in pertinent part:

(5) Reinstatement of removal orders against aliens illegally reentering. If the Attorney General [now the Secretary of Homeland Security, "Secretary"] finds that an alien 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 alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The district director based the finding of inadmissibility under sections 212(a)(9)(A), 212(a)(9)(C) and 241(a) of the Act on the applicant's admission to exclusion and removal in 1989, 1996 and 2003. Besides the applicant's statement on the Form I-212, there is no evidence in the record or in Citizenship and Immigration Services' (CIS) electronic records that the applicant has ever been removed from the United States. The AAO notes that the information available to it is based solely on the name and date of birth given by the applicant on the Form I-212. As such, without confirmation through a fingerprint-based Federal Bureau of Investigations (FBI) inquiry or documentation provided by the applicant to confirm that the applicant was indeed removed from the United States, there is currently no evidence that the applicant has ever been removed from the United States. As such, the AAO finds that the district director erred in finding the applicant inadmissible pursuant to sections 212(a)(9)(A), 212(a)(9)(C) and 241(a) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant has ever been removed from the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the district director will be withdrawn and the permission to reapply for admission application will be declared moot. However, the AAO notes that the applicant will need to file an application for permission to reapply for admission if it is later discovered that there is evidence that she has been removed from the United States.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for permission to reapply for admission is declared moot.