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U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES, CA Date:

JUN 09 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 after removal was denied by the District Director, Los Angeles, CA and was certified for review to the Administrative Appeals Office (AAO). The decision is affirmed.

The applicant is a native and a citizen of Mexico who first entered the United States without inspection in 1992. On January 11, 1996 the applicant attempted to enter the United States at the San Ysidro port of entry using a photo altered Mexican passport with an I-551 legal resident alien stamp. On January 17, 1996 the applicant was ordered excluded and deported by an Immigration Judge and departed the United States that same day. On January 26, 1996 she again attempted to enter the United States using a Border Crossing Card that belonged to another person. At that time she gave her name as [REDACTED]. She was again removed on February 1, 1996. The applicant then re-entered the United States without inspection at some point after her second removal. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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. On October 24, 2001 the applicant submitted a I-212 application to the District Office in Los Angeles. On November 13, 2001 the applicant submitted a section 212(i) waiver application to the District Office and that application was denied on November 13, 2002. On December 16, 2002 the applicant appealed the waiver application decision to the AAO. On May 16, 2003 the appeal of the waiver application was rejected and remanded to the District Office in order to have the applicant's I-212 application adjudicated. On September 16, 2004 the I-212 application was denied by the district director and was certified to the AAO for review. 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 reside in the United States with her spouse and child.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) and section 212(a)(7)(A)(i)(I) of the Act. The Director concluded that because there were no waivers for these two grounds of inadmissibility, no purpose would be served in approving the applicant's Form I-212. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. See *Director's Decision* dated September 16, 2004

Section 212(a)(9) 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.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The favorable factors in this matter are the applicant's U.S. citizen spouse and child.

The unfavorable factors in this case include the applicant's many immigration violations. The applicant attempted to procure entry into the United States twice by fraud, was removed from the United States, entered the United States without inspection on two occasions and she has many years of unauthorized presence. The applicant's actions in this matter cannot be condoned. The applicant has not established that the favorable factors outweigh the unfavorable ones in her case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the decision will be affirmed.

ORDER: The decision is affirmed.