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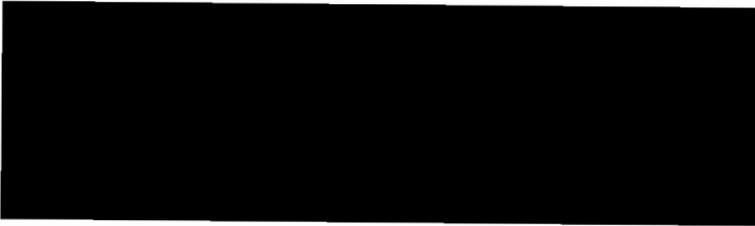
Applicant:



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 Acting Director, Vermont 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 the Dominican Republic who was admitted into the United States in possession of a non-immigrant visa on or about August 7, 1976, with an authorized period of stay until November 7, 1976. The applicant overstayed her authorized period of stay and on September 17, 1979, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) issued an Order to Show Cause (OSC) for a hearing before an immigration judge. On October 1, 1979, an immigration judge found the applicant deportable pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for having remained in the United States longer than permitted, and granted her voluntary departure until December 1, 1979, in lieu of deportation. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to December 1, 1979, changed the voluntary departure order to an order of deportation. On December 27, 1979, a Warrant of Removal/Deportation (Form I-205) was issued. On February 14, 1980, an Application for Stay of Deportation or Removal (Form I-246) was granted with a stay of deportation until the applicant's Immigrant Petition for Alien Worker (Form I-140) was adjudicated. On November 18, 1981, the Form I-140 was withdrawn. On June 19, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen son. On November 6, 2001, an Authorization for Parole of an Alien into the United States (Form I-512) was issued to the applicant. The record reflects that the applicant departed the United States on November 16, 2001, and as such self deported. The applicant was paroled into the United States on December 3, 2001, and on April 3, 2002. On February 24, 2003, the applicant appeared at a CIS office for a scheduled interview regarding a Form I-485. A Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and as a result, on August 13, 2003, the applicant was removed to the Dominican Republic. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 travel to the United States and reside with her U.S. citizen children.

The Acting Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See Acting Director's Decision* dated April 30, 2004.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(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 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 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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel submits a brief, an affidavit by the applicant, affidavits from the applicant's children, information regarding the consequences of parent-child separation and a letter counsel had submitted with the filing of the Form I-212. In his brief, counsel states that the Director erroneously stated in his decision that the applicant did not depart the United States on August 13, 2003, and that she is in the United States illegally. The affidavits from the applicant and her children talk about the applicant's good moral character and the hardship she and her children face because of their separation. In a letter dated July 21, 2003, counsel states that the applicant was unaware of her deportation order until February 24, 2003, when a Form I-871 was issued. In addition, counsel states that the applicant is the mother of six U.S. citizens, two of whom are minors who will face extreme hardship if they were to relocate with the applicant to the Dominican Republic. Finally counsel states that the applicant is the Spouse of an Abusive Lawful Permanent Resident and she is entitled to cancellation of removal under section 240A(b)(2) of the Act.

The AAO agrees with counsel in part. The record of proceedings reflects that the applicant departed the United States on August 13, 2003. Counsel and the applicant state that the applicant resides in the Dominican Republic and there is no documentary evidence to show otherwise. Counsel's assertion that the applicant was unaware of her deportation order is not persuasive, however, because on January 22, 1980, she filed an application for stay of deportation. She was obviously aware of the order of deportation. The AAO notes that on November 8, 2004, the applicant, through counsel, withdrew the Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360) she had filed as a spouse of an Abusive Lawful Permanent Resident.

The AAO conducts the final administrative review and enters the ultimate decision for CIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. See *Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003).

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 granted voluntary departure on October 1, 1979, until December 1, 1979. The applicant failed to depart on or prior to December 1, 1979, and self deported on November 16, 2001. The applicant was subsequently paroled into the United States, pursuant to section 212(d)(5) of the Act. Section 101(a)(13)(B) of the Act, 8 U.S.C. § 1101 states in pertinent part that an alien who is paroled under section 212(d)(5) shall not be considered to have been admitted. Since the applicant reentered the United States without being admitted she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i).

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-

(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.

An alien who is inadmissible under section 212(a)(9)(C)(i) 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) 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. In the present matter, the applicant's last departure from the United States occurred on August 13, 2003, less than ten 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.