



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



#11

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

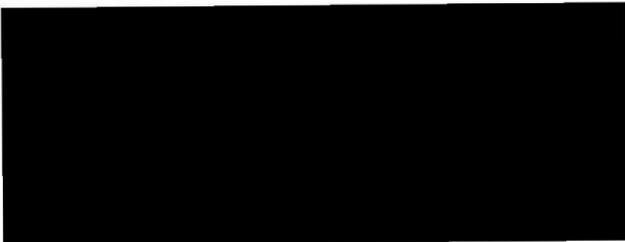
**MAY 26 2006**

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:



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 Director, California Service Center, 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 applicant is a native and citizen of Mexico who, on January 11, 1999, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented an I-551 Resident Alien Card that belonged to another. The applicant was found inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for having attempted to procure admission into the United States by fraud and without a valid immigrant visa. Consequently, January 12, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to September 5, 2001, the date on which she gave birth to her son in El Monte, California. On June 4, 2004, CIS approved a Petition For Alien Relative (Form I-130), the applicant's U.S. citizen husband filed on her behalf. On July 1, 2004, the applicant returned to Mexico to apply for an immigrant visa, based on the approved Form I-130, at a U.S. Consulate in Mexico. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 return to the United States and reside with her U.S. citizen spouse and son.

The director determined that the applicant needed to apply for permission to reapply for admission to the United States and 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 March 2, 2005.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel asserts that the facts in this case establish that the applicant warrants a favorable exercise of discretion. *See Applicant's Brief*, dated May 2, 2005.

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. As noted previously, the applicant was expeditiously removed from the United States on June 3, 1998. The applicant reentered the United States after her removal without a lawful admission or parole and without permission to reapply for admission.

The AAO finds that the applicant is inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C)(i) of the Act and, therefore, must receive permission to reapply for admission.

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.

(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.

Counsel contends that it is not clear if the applicant was granted voluntary departure or told not to return to the United States or whether she was asked if she was married to a U.S. citizen or lawful permanent resident of the United States. The record contains a Notice of Alien Order Removed/Departure Verification (Form I-296), a Notice and Order of Expedited Removal (Form I-860), a Record of Deportable/Inadmissible Alien (Form I-213) and a Sworn Statement in Proceedings under section 235(b)(1) of the Act (Form I-867A). The record verifies the following: (1) the applicant presented a resident alien card belonging to another, under the name [REDACTED] (2) when questioned by immigration officials the applicant gave the false name [REDACTED] and indicated that she was not married; (3) the applicant was provided with a notice informing her she was expeditiously removed and could not re-enter the United States for a period of five years. The AAO also notes that whether the applicant was asked if she was married to a U.S. citizen or lawful permanent resident of the United States is irrelevant as to whether the applicant was excludable since that family relationship alone does not confer the applicant with a valid immigrant visa that would permit her to enter the United States, nor would it render the applicant's fraud moot.

The AAO notes that an exception to section 212(a)(9)(C)(i) of the Act is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

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 10 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 July 1, 2004, less than ten years ago. She is currently statutorily ineligible to apply for permission to reapply for admission. The applicant is eligible to file the Form I-212 after July 1, 2014, at which time the applicant will also need to file an application for waiver of the 212(a)(6)(C)(i) inadmissibility grounds pursuant to section 212(i) of the Act.

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.