



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: OCT 06 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:

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

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 April 14, 1998, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented a counterfeit I-551 Lawful Permanent Resident Stamp, under the name [REDACTED]. The applicant was found inadmissible pursuant to 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. Consequently, on April 14, 1998, 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 April 18, 1998. On February 26, 1999, the applicant married her U.S. citizen spouse. On December 26, 2000, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 13, 2001. On October 3, 2001, immigration officers apprehended the applicant at Citizenship and Immigration Services' (CIS) San Francisco, California, District Office. On October 4, 2001, a Notice of Intent/Decision to Reinstate Prior Order was issued. On October 5, 2001, the applicant was removed from the United States pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). 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 travel to the United States and reside with her U.S. citizen spouse.

The director determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(9)(A)(i) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(i) and 1182(a)(9)(B)(i)(II), for seeking admission to the United States within 20 years after the date on which she was removed for a second time from the United States and for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The director then determined that the applicant is not eligible for any relief or waiver of these grounds of inadmissibility. The director then denied the Form I-212 accordingly. *See Director's Decision*, dated October 12, 2005.

On appeal, counsel contends that the applicant is eligible for permission to reapply for admission and that inadmissibility pursuant to section 212(a)(9)(A) of the Act is unconstitutional. *See Applicant's Brief*, dated November 10, 2005. The entire record was reviewed in rendering a decision in this case.

Constitutional issues are not within the appellate jurisdiction of the AAO, therefore this assertion will not be addressed in the present decision.

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 April 14, 1998. The applicant reentered the United States after her removal without a lawful admission or parole and without permission to reapply for admission and was again removed subject to a reinstatement of the prior removal order on October 5, 2001.

The AAO finds that the applicant is clearly 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.

The AAO notes that an exception to the section 212(a)(9)(C)(i) ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See also* 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 Citizenship and Immigration Services (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 October 5, 2001, less than ten years ago. She is currently statutorily ineligible to apply for permission to reapply for admission. When the applicant becomes eligible to file the Form I-212 she may also need to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) to apply for a 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.