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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

H4

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 03 2007

IN RE:

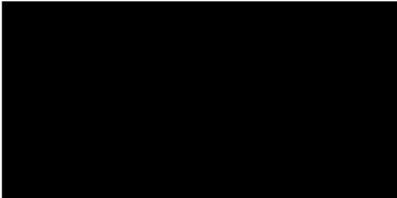
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The applicant is a native and citizen Mexico who entered the United States without a lawful admission or parole in August 1992. The applicant departed the United States on an unknown date and on February 16, 1996, at the San Ysidro, California Port of Entry applied for admission into the United States by presenting a Border Crossing Card (Form I-586) that did not belong to her. The applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa or other valid entry document. The applicant was placed in exclusion proceedings and on February 28, 1996, an immigration judge ordered the applicant excluded and deported from the United States. Consequently, on the same date the applicant was removed to Mexico. The record reflects that the applicant reentered the United States sometime in 1998 without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Form I-130 filed by her U.S. citizen spouse. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She now 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 U.S. citizen spouse and children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. See *Director's Decision* dated May 16, 2006.

On the Notice of Appeal to the AAO (Form I-290B) counsel writes:

"The Service erred in denying our clients application for permission to reapply for admission into the United States after deportation or removal."

In addition, on the Form I-290B counsel states that he will be submitting a brief and/or evidence to the AAO within 30 days.

On February 12, 2007, the AAO forwarded a fax to counsel informing him that this office had not received a brief or evidence related to this matter and unless counsel responded within five business days the appeal may be summarily dismissed. Counsel responded to the AAO's fax and stated that he did not file a brief or evidence to support the appeal. In addition, in response to the AAO's fax counsel submitted a letter in which he states that the applicant was eligible for adjustment of status under section 245(i) of the Act, a fact that according to counsel was not considered by the Service. In addition, counsel states that it is inappropriate to deny an application because the individual filed for permission to reapply for entry from within the United States following an earlier removal. *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). The fax forwarded to counsel specifically stated that it should not be interpreted as a request or permission to submit a late brief and/or evidence. Therefore, the AAO will not consider the assertions in counsel's letter. The AAO will adjudicate the appeal based on the documentation within the record of proceeding.

The regulation at 8 C.F.R. § 103.3(a)(1) states in pertinent part:

(v) Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal....

In the instant case the applicant has failed to identify any erroneous conclusion of law or statement of fact for the appeal and, therefore, it will be summarily dismissed.

ORDER: The appeal is summarily dismissed.