

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

[REDACTED]

FILE:

Office: BALTIMORE, MD
RELATES)

Date: OCT 23 2007

IN RE:

[REDACTED]

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:

[REDACTED]

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 District Director, Baltimore, Maryland, 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 The decision of the district director will be withdrawn and the appeal will be dismissed as the waiver application is moot.

The applicant is a native and citizen of Honduras who, on July 8, 1989, was placed into immigration proceedings after having entered the United States without inspection. On April 24, 1990, the immigration judge ordered the applicant removed *in absentia*. On May 1, 1991, the applicant's spouse filed a Petition for Alien Relative (Form I-130), which was approved on June 12, 1991. On November 30, 1994, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On August 11, 1997, the Form I-485 was denied for lack of jurisdiction. On November 3, 2000, the applicant filed a second Form I-485 based on the approved Form I-130. On February 25, 2002, the second Form I-485 was denied for lack of jurisdiction. On September 23, 2002, the applicant filed the Form I-212. The district director denied the Form I-212 after finding the applicant inadmissible under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A). 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 lawful permanent resident spouse and U.S. citizen daughter.

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision* dated June 12, 2006.

On appeal, counsel contends that the applicant's spouse and child would suffer hardship if she was removed from the United States. Counsel asserts that the applicant's removal proceedings have been reopened and she is scheduled to appear before the immigration court on November 7, 2006. *See Counsel's Brief*, dated July 8, 2006. In support of the appeal, counsel submits the referenced brief, an affidavit and court documentation. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is not inadmissible under section 212(a)(9)(A) of the Act and she is, therefore, not required to receive permission to reapply for admission at this time.

Section 212(a) 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.

- (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 who 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 on a 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.

The district director based the finding of inadmissibility under section 212(a)(9)(A) of the Act on the applicant's April 24, 1990, removal order. The record reflects that, on October 30, 2005, the immigration court in Harlingen, Texas reopened the applicant's immigration proceedings. It further indicates that the applicant was scheduled for a hearing before the immigration judge on December 19, 2006. As such, the AAO finds that the applicant is not subject to a final order of removal, was not removed under an order of removal, did not depart the United States under an order of removal, and is, therefore, not inadmissible pursuant to section 212(a)(9)(A) of the Act.

The applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant is subject to a final order of removal or has ever been removed from the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the district director will be withdrawn and the appeal will be dismissed as the underlying application is moot.

ORDER: The decision of the district director is withdrawn and the appeal is dismissed as the underlying application is moot.