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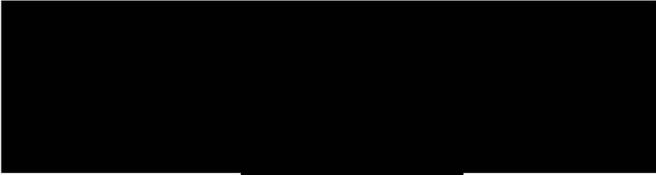
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER
[consolidated therein]

Date: APR 25 2008

IN RE:

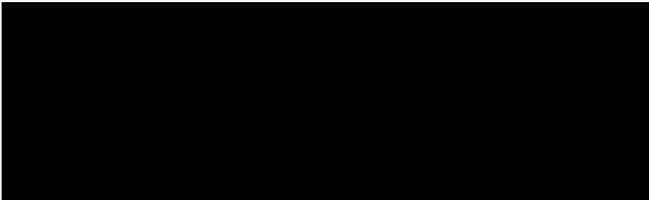
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 after removal was denied by the Director, California 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 Mexico who married [REDACTED], a naturalized United States citizen, on September 19, 1997, in Mexico. Based on the applicant's Petition for Alien Relative (Form I-130), the applicant entered the United States without inspection on October 18, 1997. On January 29, 1998, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On July 19, 1998, the applicant's son, [REDACTED], was born in California. On an unknown date, the applicant departed the United States. On February 17, 1999, the applicant attempted to enter the United States by presenting a Resident Alien Card (Form I-551) in someone else's name and was expeditiously removed from the United States. After her removal, the applicant reentered the United States without inspection. On November 9, 2000, the applicant's Form I-130 was approved. On October 3, 2003, the applicant's Form I-485 was denied. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), and 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). 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 reside with her United States citizen spouse and son.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for being unlawfully present in the United States after previous immigration violations, and section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A), for being previously removed from the United States. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated August 11, 2006. The AAO finds that the applicant is also inadmissible under section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for being present in the United States without being admitted or paroled and for attempting to obtain seek admission into the United States by fraud, respectively.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' 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.

Section 212(a)(6)(A). Illegal entrants and immigration violators.-

(A) Aliens present without admission or parole.-

(i) In general.- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary], is inadmissible.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 in 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 deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, contends that since the applicant's "case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit," the Director is "enjoined by the preliminary injunction issued by the federal district court in the class action *Duran Gonzalez v. DHS*, 2:06-CV-1411 (W.D. Wash.)" from denying the applicant's Form I-212. *Appeal Brief*, page 1, filed July 9, 2007. Counsel is correct that based on the *Duran Gonzalez* class action, the Service is enjoined from denying a Form I-212 based on section 212(a)(9)(C) of the Act; however, the applicant in the present case was also found inadmissible under sections 212(a)(9)(A), 212(a)(6)(A), and 212(a)(6)(C) of the Act.

Counsel states the applicant "has resided in the United States since 1997." *Id* at 2. The AAO notes that the applicant's numerous years of residence in the United States has been without authorization and that is an unfavorable factor. Counsel claims that the applicant "is a loving wife and mother and is an essential part of her family's life in the United States...[The applicant] is extremely instrumental in her son's education and care, as well as the care of her spouse and other family members. [The applicant's] spouse has to be at work as early as 6:00 a.m. in the morning. Therefore, [the applicant] takes their son [REDACTED] to school making sure that he arrives on time...[The applicant's] spouse, [REDACTED] is frequently ill because he suffers from severe pharyngitis, chronic bronchitis, and a chronic infection of the throat. While he is sick, [the applicant] cares for her spouse and attends to all the family responsibilities. [The applicant] also has responsibilities for her elderly parents who are lawful permanent residents, as well as her in-laws." *Id.* at 3; *see also letter from [REDACTED], Lafayette Elementary School*, dated July 28, 2005 ("[The applicant] is a responsible parent who makes sure that her child in class everyday on time and ready to learn...[The applicant] also attends parent workshops and English classes at Lafayette Elementary School...[She] appreciate[s] the responsibility that [the applicant] takes upon herself to insure her child's academic growth."). The applicant's husband states that his "parents are old and sick and rely on [the applicant] to care for them. [The applicant's] parents are also here, and she helps them as well, cooking and cleaning for them." *Declaration of [REDACTED]*, December 5, 2005. [REDACTED] diagnosed the applicant's husband with severe pharyngitis and severe bronchial infections. *Letter from [REDACTED]*, dated December 2, 2005. Regarding the hardship the applicant's family may face, the AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's family, but it will be just one of the determining factors.

The record of proceedings reveals that on February 17, 1999, the applicant was expeditiously removed from the United States after attempting to enter the United States by presenting a Form I-551 in someone else's name. The applicant later reentered the United States without inspection. Based on the applicant's previous removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

The favorable factors in this matter are the applicant's family ties to United States citizens, her husband and son, general hardship they may experience, no criminal record, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, her use of a Form I-551 in someone else's name in order to obtain entry into the United States, her illegal reentry into the United States subsequent to her February 17, 1999 removal, and periods of unauthorized presence.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.