

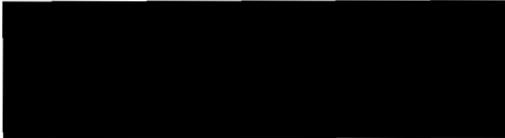
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U.S. Citizenship
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FILE: [REDACTED] Office: PORTLAND, OR

Date: **JUL 14 2008**

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:



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 application for permission to reapply for admission after removal was denied by the District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant is a native and citizen of Mexico who on April 13, 2000, attempted to procure admission into the United States by presenting a fraudulent border crossing card. 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). She reentered the United States without inspection on April 14, 2000. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 family.

The district director determined that section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5) applies in this matter as the applicant's previous removal order was reinstated following her unlawful admission. *District Director's Decision*, at 2, mailed July 8, 2004. Accordingly, he found the applicant ineligible to apply for relief under the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212). *Id.*

Section 212(a)(9)(A) of the Act provides, in pertinent part:

(A) Certain alien 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 5 years of the dated of such removal. . . 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.

Counsel asserts that pursuant to the August 13, 2004, Ninth Circuit Court of Appeals decision, *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), section 241(a)(5) of the Act is not applicable as the applicant submitted her I-212 application before the reinstatement of her removal order. *Brief in Support of Appeal*, at 1, dated August 14, 2004.

While the AAO notes counsel's assertion, it will not address this aspect of the applicant's appeal. The AAO has, in a separate decision, dismissed the applicant's appeal of the denial of the Form I-601, which the applicant filed in relation to her inadmissibility for willful misrepresentation under section 212(a)(6)(C)(i) of the Act. When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual* provides the following guidance:

Chapter 43 Consent to Reapply After Deportation or Removal

43.2 Adjudication Processes:

(d) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the AAO has determined that the applicant is not eligible for a waiver of inadmissibility under section 212(i) of the Act and has dismissed her appeal of the Form I-601 denial, no purpose would be served in granting her application for permission to reapply for admission. Accordingly, the appeal of the district director's denial of the Form I-212 is dismissed as a matter of discretion and the application is denied.

ORDER: The appeal is dismissed. The application is denied.