

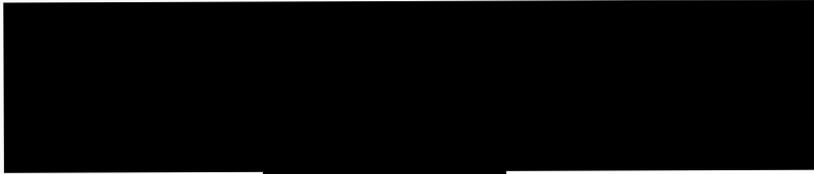
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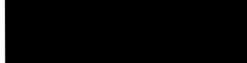
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 14 2008

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: Self-represented

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 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 The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico whose lawful permanent resident spouse, [REDACTED] on September 11, 2000, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On January 12, 2002, the applicant appeared at the Tecate Port of Entry. The applicant presented an I-551 Lawful Permanent Resident Card bearing 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 January 12, 2002, 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), and returned to Mexico, where she has since resided. On July 22, 2002, the Form I-130 was approved. On October 31, 2006, the applicant filed the Form I-212. 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 enter the United States and reside with her lawful permanent resident spouse.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director then denied the Form I-212 accordingly. *See Director's Decision* dated May 4, 2007.

On appeal, the applicant asserts that her husband has been experiencing extreme psychological and physical hardship. *See Form I-290B*, dated May 17, 2007. In support of her contentions, the applicant submits the referenced Form I-290B, a psychological report concerning her spouse, letters and a police clearance letter. 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 is not required to 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.
- (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 applicant is an alien who has been expeditiously removed from the United States under section 235(b) of the Act and would be inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) if she were seeking admission to the United States within five years after her removal from the United States. The applicant's expeditious removal, however, occurred on January 12, 2002, more than five years ago. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

The AAO finds that the director erred in determining that the applicant was required to apply for permission to reapply for admission to the United States. At the time the Form I-212 was adjudicated, it had been five years since the applicant's removal from the United States and she had submitted evidence that she had remained outside the United States since her removal. She, therefore, does not require permission to reapply for admission, so the appeal will be dismissed, the decision of the director will be withdrawn and the application for permission to reapply for admission will be declared moot.

The AAO notes that the applicant is, however, still inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act based on her 2002 attempt to obtain entry into the United States by fraud. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), the applicant will need to file an Application for Waiver of Ground of Inadmissibility (Form I-601).

ORDER: The appeal is dismissed, the decision of the director is withdrawn and the application for permission to reapply for admission is declared moot.