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**U.S. Citizenship
and Immigration
Services**

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MAY 29 2008

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

AND
(RELATE)

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 The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.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 El Salvador who, on April 7, 2006, filed the Form I-212. On the Form I-212, the applicant states that she was removed from the United States on June 5, 1977. The record indicates that the applicant remained outside the United States until 1984 when she reentered the United States without inspection or admission. On January 14, 1994, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advanced parole authorization to depart and return to the United States in 1994. The director found the applicant inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A) and 1182(a)(9)(C). 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 and work in the United States.

The director determined that the applicant was statutorily ineligible to apply for permission to reapply for admission to the United States because she is inadmissible pursuant to section 212(a)(9)(C) of the Act and it has been less than ten years since her last departure from the United States. The director denied the Form I-212 accordingly. *See Director's Decision* dated March 1, 2007.

On appeal, the applicant contends that she is not inadmissible pursuant to section 212(a)(9)(C) of the Act. *See Applicant's Brief*, received April 26, 2007. In support of the appeal, the applicant submits the referenced brief and a copy of a memorandum issued by legacy Immigration and Naturalization Services' Office of Programs. The entire record was reviewed in rendering a decision in this case.

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.

Section 212(a)(9)(C) of the Act states in pertinent part:

(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.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between -

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The record reflects that, on June 5, 1977, immigration officers apprehended the applicant after she entered the United States without inspection and that the applicant was granted permission to return to El Salvador voluntarily. *Form I-213 and Form I-274A*, dated June 5, 1977. The record reflects that the applicant departed the United States and returned to El Salvador on June 7, 1977. There is no evidence that the applicant was ordered removed on June 5, 1977, as she indicates on the Form I-212, or on any other date. Accordingly, the record does not establish that the applicant is inadmissible to the United States pursuant to sections 212(a)(9)(A) and 212(a)(9)(C) of the Act.

The AAO therefore finds that the applicant is not required to apply for permission to reapply for admission to the United States because the applicant was not removed from the United States in June 1977, but allowed to depart voluntarily. Since the applicant does not require permission to reapply for admission, 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.

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