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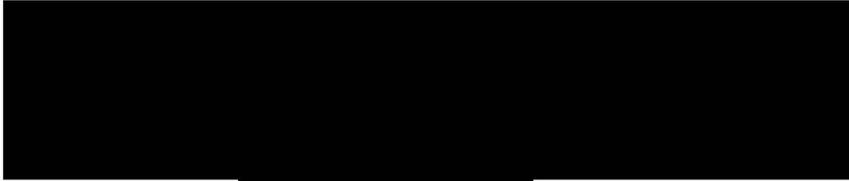
U.S. Department of Homeland Security
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Washington, DC 20529



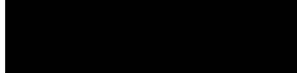
U.S. Citizenship
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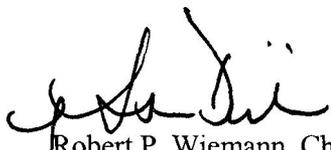


APPLICATION: Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 Field Office Director, Pittsburgh, Pennsylvania, 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.

On appeal, the applicant requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

The applicant is a native and citizen of Chile who, on April 28, 1997, was admitted to the United States as a nonimmigrant visitor. The applicant overstayed her nonimmigrant status, which expired on October 27, 1997. On November 10, 1997, the applicant married a U.S. citizen, [REDACTED]. On November 21, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130), filed on the applicant's behalf by Mr. [REDACTED]. On June 26, 1998, [REDACTED] withdrew the Form I-130, stating that the applicant had departed the United States and failed to return to the United States for more than seven months and that he was preparing to file for divorce. On July 29, 1998, the Form I-485 was denied. On October 21, 1998, the applicant appeared at John F. Kennedy International Airport. The applicant presented her Chilean passport and a U.S. nonimmigrant visa, claiming that she sought to enter the United States for a vacation.¹ The applicant was placed into secondary inspections where she admitted that she had attempted to reenter the United States with the intent to resume her residence and file for adjustment of status based on her marriage to [REDACTED]. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(7)(a)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(a)(i)(I), as an immigrant without valid documentation. On the same day, the applicant was placed into immigration proceedings. On March 23, 1999, the immigration judge granted the applicant voluntary departure until May 23, 1999. The applicant failed to surrender for removal or depart from the United States, thereby changing the grant of voluntary departure to a final order of removal. On March 29, 1999, a second Form I-130 was filed on behalf of the applicant, which was approved on March 31, 1999. The applicant filed a motion to reopen, which was granted. On June 21, 1999, the applicant filed a Petition for Amerasian, Widow or Special Immigrant (Form I-360), which was denied on November 8, 1999. On March 21, 2000, the immigration judge ordered the applicant removed from the United States *in absentia*.

On March 27, 2000, the applicant filed a second Form I-360. The applicant filed a motion to reopen the immigration judge's order. On July 7, 2000, the motion to reopen was denied. The applicant filed an appeal with the Board of Immigration Appeals (BIA) of the immigration judge's denial of the motion to reopen. On February 2, 2001, the second Form I-360 was denied. On March 7, 2001, the applicant filed an appeal of the denial of the second Form I-360 with the AAO. On April 24, 2001, the BIA denied the applicant appeal of the denial of the motion to reopen. On June 28, 2001, a warrant for the applicant's removal was issued. On July 6, 2001, the AAO summarily dismissed the applicant's appeal of the I-360. On July 25, 2001, the applicant was

¹ The AAO notes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by willful misrepresentation of a material fact by attempting to conceal her immigrant intent at the time she initially sought entry into the United States for the sole purpose of "vacation."

removed from the United States and returned to Chile, where she has since resided.² On August 9, 2001, a Notice Of Intent to Revoke (NOIR) the second Form I-130 was issued. On September 14, 2001, the second Form I-130 was revoked. On December 7, 2001, the applicant's divorce from [REDACTED] was finalized. On January 12, 2002, the applicant married her current U.S. citizen spouse, [REDACTED], in Chile. On June 5, 2002, [REDACTED] filed a Form I-130 on behalf of the applicant, which was approved on April 15, 2005. On February 14, 2006, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) for seeking admission after being ordered removed. 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 U.S. citizen spouse.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated August 28, 2007.

On appeal, the applicant contends that the field office director erred in denying the applicant's Form I-212. *See Form I-290B*, dated September 24, 2007. In support of her contentions, that applicant submits letters from herself and [REDACTED] and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 204(c) of the Act states that no petition shall be approved if:

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested.

The record reflects that the second Form I-130 filed on behalf of the applicant was revoked under section 204(c) of the Act, because the applicant had entered into her marriage to [REDACTED] with the sole purpose of evading the immigration laws of the United States. *See Revocation of Form I-130 and Intent to Revoke Form I-130*, dated September 14, 2001, and August 9, 2001. The applicant, on appeal, contends that she did not commit fraud or attempt to take advantage of [REDACTED] in order to gain immigration benefits in the United States. She contends that she did not pay or receive money in order to marry Mr.

² The AAO notes that the applicant is also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more the one year of unlawful presence, from March 21, 2000, the date on which the immigration judge ordered the applicant removed from the United States, and July 25, 2001, the date on which she departed the United States, and seeking admission within ten years of her last departure.

██████████. The applicant contends that ██████████ attempted to manipulate her immigration status and that ██████████ does not have concrete proof that she had an affair during her marriage to him. She contends that ██████████ had the Form I-130 revoked after she left him due to the violence in their home, as a form of revenge. In support of her contentions, the applicant submits copies of police reports and protection orders that were determined in two separate decisions to fail to establish that she was the victim of abuse at the hands of ██████████. See *Denials of Forms I-360*, dated November 8, 1999, and February 2, 2001. These decisions also reflect that there were several inconsistencies in the documentation and testimony provided to support the applications and credible evidence of her fraudulent intent in entering into the marriage.

The record contains a Form I-290B, dated October 8, 2007, indicating that the applicant wished to appeal or make a motion to reopen the revocation of the second Form I-130. The Form I-290B was submitted by ██████████, an individual who is not an affected party, licensed attorney or representative permitted to file applications or petitions on behalf of the applicant. Furthermore, the Form I-290B does not have an accompanying filing fee.³ The applicant has, therefore, not filed an appeal of or a motion to reopen/reconsider the revocation of the Form I-130 and the determination that she engaged in fraud and is ineligible to apply for an immigrant visa pursuant to section 204(c) of the Act. The revocation of the Form I-130 based on a violation of section 204(c) of the Act is final.⁴

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 204(c) of the Act, which are very specific and applicable. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

The AAO notes that the record indicates that the applicant is inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. To seek a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, an applicant must file an Application for Waiver of Ground of Inadmissibility (Form I-601).⁵

ORDER: The appeal is dismissed.

³ The AAO notes that ██████████ submitted a filing fee dated September 26, 2007, as proof of payment of the required filing fee. However, this filing fee is for the Form I-290B in connection with the applicant's appeal of the denial of the Form I-212. Each Form I-290B requires a separate filing fee. Furthermore, the AAO does not have jurisdiction over family-based petitions. The Board of Immigration Appeals (BIA) is the appropriate authority with which an applicant may file such an appeal. The record does not establish that the applicant has filed an appeal with the BIA.

⁴ The AAO notes that the Form I-130 filed by ██████████ was approved in error since the applicant is ineligible to apply for an immigrant visa under section 204(c) of the Act.

⁵ If an applicant resides abroad he or she must file the Form I-601 simultaneously with a new Form I-212 at the time he applies for an immigrant visa at the U.S. Embassy that has jurisdiction over his place of residence. See 8 C.F.R. § 212.2(d)