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

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 31 2004

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:

[redacted]

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be denied and the previous decisions of the director and the AAO will be affirmed.

The applicant is a native and citizen of Mexico who attempted to procure admission into the United States by presenting a Resident Alien Card (I-551) belonging to another individual on January 17, 1998. The applicant was determined to be inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(7)(A)(i)(I). The applicant was subsequently removed from the United States and warned, in writing, that any reentry within five years of her deportation required the express permission of the Attorney General [now the Secretary of Homeland Security (Secretary)]. The applicant reentered the United States three days after being removed. Therefore, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(i), 8 U.S.C. § 1182(a)(9)(A)(i). The applicant is married to a U.S. citizen and seeks permission to reapply for admission in order to remain in the United States with her husband and children.

The director found that as a result of the 1998 reentry without permission or inspection, the applicant is inadmissible to the United States and no waiver is available. The application was denied accordingly. *Decision of the Director*, April 29, 2003.

On appeal, the AAO determined that the applicant is subject to reinstatement of her removal order pursuant to section 241(a)(5) of the Act. *Decision of the AAO*, dated December 12, 2003.

On motion to reconsider, counsel submits a statement indicating that the applicant's husband and three children would experience extreme hardship as a result of separation from the applicant. Counsel asserts that the applicant's inadmissibility may be waived pursuant to sections 212(d)(4) and 212(d)(5) of the Act.

The entire record was reviewed and considered in rendering a decision on the appeal.

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) . . . who again seeks admission within 5 years of the date 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 alien's reembarkation at a place outside the United States* or attempt to be admitted from foreign contiguous territory, the Attorney General (Secretary) has consented to the alien's reapplying for admission.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. § 103.3(v) (2002) states in pertinent part:

(v) Summary Dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On motion to reconsider, the record does not contain any additional documentation and the applicant fails to identify any erroneous conclusion of law or statement of fact in her appeal. Although counsel invokes both sections 212(d)(4) and 212(d)(5) of the Act, counsel fails to establish how the application warrants the involvement of the Secretary of State and the Attorney General [now Secretary of Homeland Security] acting jointly pursuant to section 212(d)(4) of the Act or why the applicant should be granted parole for humanitarian reasons pursuant to section 212(d)(5) of the Act. The motion will therefore be summarily dismissed.

ORDER: The motion is denied. The decision of December 12, 2003 dismissing the appeal is affirmed.