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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: EL PASO, TX Date: JUN 03 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: 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, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Interim District Director Services, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found inadmissible under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for having attempted to procure admission into the United States by falsely claiming to be a United States citizen on or about May 17, 1982. 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.

The interim district director determined that there is no waiver of inadmissibility available to the applicant. The interim district director further concluded that the applicant had not been removed from the United States and therefore, denied the Form I-212 application accordingly. *See* Decision of the Interim District Director, dated August 19, 2003.

On appeal, the applicant asserts that she has "learned [her] lesson" and feels that the United States is her home after residing here for three years and 10 months. *See* Form I-290B, dated September 2, 2003.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> > (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 5 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) [A]ny alien . . . who-
> > >
> > > > (I) Has been ordered removed under section 240 or any other provision of law . . . 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 [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Based on the decision of the interim district director and the limited evidence in the record, the AAO upholds the finding that the applicant does not require approval of the Form I-212 because she was not removed from

the United States. The director's denial of the I-212 application was thus proper. The AAO notes, however, that the finding of the interim district director that the applicant is ineligible for a waiver is premature. If the applicant's false claim to U.S. citizenship occurred prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the applicant *may* be eligible for a waiver of her grounds of inadmissibility. In that case, the applicant would require a waiver of inadmissibility granted by Citizenship and Immigration Services pursuant to the proper filing of a Form I-601 Application for Waiver of Grounds of Excludability.

In discretionary matters, the applicant bears the full burden of proving her eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that she warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.