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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 07 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

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, Vermont Service Center, and 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 The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.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 Ecuador who entered the United States without inspection on or about January 16, 1989. The applicant departed from the United States during July 1994 and was paroled back into the United States on or about August 18, 1994 for humanitarian purposes. 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 husband and U.S. citizen son.

The director determined that the unfavorable factors in the application outweighed the favorable factors. The I-212 application was denied accordingly. *See* Decision of the Director, dated April 10, 2003.

On appeal, the applicant asserts that she has "four more children" whom she has to support and that she has the right to apply for a green card. *See* Form I-290B, dated April 25, 2003.

The record submits no additional documentation to support the applicant's assertions. The entire record was reviewed and considered in rendering a decision on the appeal.

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.-
>
> . . . .
>
> (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.

The record reflects that on August 22, 2000 the applicant was issued a Notice to Appear by the former Immigration and Naturalization Service [now Immigration and Customs Enforcement]. She was ordered to appear before the Immigration Court on October 27, 2000. Service records indicate that on that date the immigration judge declined to enter a final order of deportation due to lack of prosecution. The record does not reflect that the applicant was issued a final order of removal and therefore, the applicant was not ordered

removed under section 240 of the Act or any other provision of law. The applicant is, therefore, not inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act.

A clear reading of the law reveals that the applicant is not inadmissible. She, therefore, does not need a waiver of inadmissibility, so the appeal will be dismissed, the decision of the director will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the application for waiver of inadmissibility is declared moot.