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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: [illegible]

IN RE: Applicant: [redacted]

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

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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was present in the United States without a lawful admission or parole on or about July 1, 1999. On September 2, 1999, the applicant was apprehended and found excludable under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured benefits provided under the Act by willfully misrepresenting a material fact (presenting a fraudulent Alien Registration Card (ARC) to obtain employment). The applicant was granted voluntary departure in lieu of deportation and left the United States on September 3, 1999. The record reflects that the applicant reentered the United States on an unknown date after her departure without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). She remained in the United States until February 11, 2002, when she departed to Mexico. The applicant is therefore inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I). She seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to travel to the United States and reside with her U.S. citizen spouse and child.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the application accordingly. *See Director's Decision* dated November 12, 2003.

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 Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General 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.

To recapitulate, the applicant was granted voluntary departure and left the United States on September 3, 1999. The applicant reentered the United States on an unknown date after her departure without a lawful admission or parole and without permission to reapply for admission and departed in February 2002. She is therefore subject to section 212(a)(9)(C)(i)(I) of the Act.

On appeal the applicant's spouse (Mr. states that the applicant was deported to Mexico in 1999, and reentered the United States without permission. In addition Mr. states that the applicant was much younger, did not have a child or a love interest. Mr. states that in February 2002 the applicant decided to return to Mexico in order to do the right thing and stop breaking the law. Additionally Mr. states that she is not a criminal, she is a loving mother and wife, and that he believes that she will prove to be a valuable member of our society.

Notwithstanding the arguments on appeal the applicant is subject to the provisions of section 212(a)(9)(C)(i)(I) of the Act, which are very specific and applicable. The applicant is not eligible to apply for any relief under this Act unless 10 years pass after the date of her last departure form the United States and the Secretary has consented to the alien's reapplying for admission. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.