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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

H4

FEB 25 2005

FILE: [redacted] Office: SAN ANTONIO, TEXAS Date:

IN RE: Applicant: [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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the District Director, San Antonio, 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 attempted to procure admission into the United States on December 11, 1998, by fraud and willful misrepresentation of a material fact. The applicant presented a counterfeit Arrival-Departure Record (Form I-94). The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document. Consequently, on the same day the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). She is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen daughter. She 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 travel to the United States.

The District Director determined that the applicant is inadmissible to the United States because she falls within the purview of section 212(a)(6)(C)(i) of the Act, and since she did not submit the appropriate fee in order to file an Application for Waiver of Grounds of Inadmissibility (Form I-601), her Form I-212 could not be approved. In addition the District Director states in his decision that the applicant did not present evidence that she remained outside the United States for the appropriate length of time after her removal. The District Director then denied the application accordingly. *See District Director's Decision* dated August 17, 2004.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 five 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.

. . . .

(iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping

aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal the applicant's representative states that they submitted the fee for the Form I-212 and he is resubmitting the fee as requested. The fees the applicant's representative refers to were for two Form I-212's submitted on February 27, 2001, and August 14, 2003, and not for a Form I-601.

As noted above the applicant is inadmissible to the United States because she falls within the purview of section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act, is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or lawfully resident daughter.

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.

A review of the documentation in the record reflects that the applicant has failed to show that she has a qualifying family member in order to be eligible to file for a waiver under section 212(i) of the Act. 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.