U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

H4

[redacted]

JAN 13 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER 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: 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.

Ellen C. Johnson

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, California Service Center, 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 on May 16, 1996, was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (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. The record of proceedings reflects that the applicant was removed from the United States and reentered in May 1997, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant is inadmissible under § 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 remain in the United States and reside with her U.S. citizen spouse and child.

The Director determined that the applicant is inadmissible under Section 212(a)(9)(C) of the Act and that section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated June 28, 2004.

On appeal the applicant states that she made a mistake about the date she reentered the United States after her removal. She first had stated that she reentered in May 1997 and on appeal she states that she reentered no sooner than June 5 1997.

The date of her reentry does not alter the fact that the applicant reentered the United States after her removal of May 16, 1996, without a lawful admission or parole and without permission to reapply nor that she has been unlawfully present in the United States for an aggregate period of more that one year. Therefore the applicant is inadmissible under section 212(a)(9)(C) of the Act and she is subject to the provision of section 241(a)(5) of the Act.

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.

Section 241(a) (5) of the Act states:

> Detention, release, and removal or aliens ordered removed.-
>
> > (5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

To recapitulate, the applicant was removed from the United States on May 16, 1996. She reentered the United States without a lawful admission or parole and without permission to reapply for admission. She has been unlawfully present in the United States for an aggregate period of more that one year and therefore she is subject to section 212(a)(9)(C)(i)(I) and (II) of the Act. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. The applicant is subject to the provision of section 241(a)(5) of the Act, and is not eligible for any relief under this Act.

*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.

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 applicant is not eligible for any relief under the Act and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.