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

U.S. Citizenship and Immigration Services

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MAR 08 2005

[redacted]

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

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 Interim District Director for Services, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 entry into the United States by fraud or willful misrepresentation. On or about February 15, 2000, the applicant was removed from the United States. The applicant is married to a citizen of the United States 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 reside with her U.S. citizen husband.

The interim district director determined that the applicant failed to establish that her application warrants a favorable exercise of the Attorney General [now Secretary of Homeland Security]'s discretion and denied the Form I-212 accordingly. *Decision of the Interim District Director*, dated April 5, 2003.

On appeal, the applicant asserts that it would be an injustice and an inconvenience to require her husband to live in the United States without his family or to require him to return to Mexico due to the present status of the nation's economy. *Form I-290B*, dated May 5, 2003. 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.-
>
> (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.
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> . . . .
>
> (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.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The record reflects that on February 21, 2000, the applicant presented fraudulent pay receipts and Mexican Social Security papers in an attempt to obtain a travel permit to San Antonio, Texas.

The favorable factors in the application are the hardship imposed on the applicant's United States citizen husband by the applicant's inadmissibility to the United States and her apparent lack of a criminal record. The AAO notes that the record makes no specific assertions of hardship to the applicant's husband. The applicant has remained outside of the United States for over four years in compliance with her order of removal, thereby demonstrating reformation and rehabilitation from her disregard for the immigration laws of this country.

The unfavorable factor in the application is the applicant's fraudulent misrepresentations to immigration inspectors on February 21, 2000 resulting in inadmissibility to the United States and requiring the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601) in addition to the instant application.

The applicant has established that the favorable factors in her application outweigh the unfavorable factors. The interim district director's denial of the I-212 application was thus improper in its result. The appeal will be sustained and the application will be approved. The AAO notes that the applicant also requires an approved Form I-601 waiver of inadmissibility if she is seeking to obtain permanent residency in the United States.

ORDER: The appeal is sustained and the application is approved.