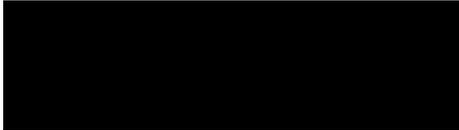


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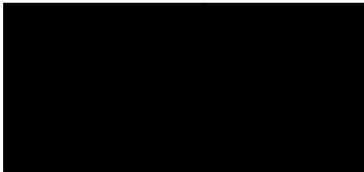
H4

FILE:  Office: CALIFORNIA SERVICE CENTER Date: MAY 27 2005

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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:



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 after 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 April 13, 1998, at the San Ysidro, California Port of Entry applied for admission into the United States. She orally represented herself to be a citizen of the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents herself to be a citizen of the United States for any purpose or benefit under this Act 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 other valid entry document. 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). The record reflects that on April 15, 1998, the applicant again applied for admission into the United States and orally represented herself to be a U.S. citizen. The applicant was found inadmissible pursuant to sections 212(a)(6)(C)(ii), 212(a)(7)(A)(i)(I) and 212(a)(9)(A)(i) of the Act, and she was served with a Notice to Appear for a hearing before an Immigration Judge. On July 1, 1998, the applicant failed to appear for a removal hearing and she was subsequently ordered removed in absentia by an Immigration Judge. The record further reflects that the applicant entered the United States on an unknown date 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 inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She is the beneficiary of an Application for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. She now 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 children.

The Director determined that section 241(a)(5) of the Act, applies in this matter and the applicant is not eligible and may not apply for any relief. The Director then denied the application accordingly. *See Director's Decision* dated September 28, 2004.

Section 241(a) detention, release, and removal or aliens ordered removed.-

(5) reinstatement of removal orders against aliens illegally reentering.- if the attorney General finds that an aliens 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 aliens is not eligible and may not apply for any relief under this Act [chapter], and the aliens shall be removed under the prior order at any time after reentry.

The Ninth Circuit Court of Appeals in its August 14, 2004, decision, *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004), ruled that a Mexican national who returned to the United States following a deportation and had his deportation order reinstated might nonetheless obtain adjustment of status if his Form I-212 was granted. The Ninth Circuit Court of Appeals stated in *Perez-Gonzalez* that: "Given the fact that Perez-Gonzalez applied for the waiver *before* his deportation order was reinstated, he was not yet subject to its terms and, therefore, was not barred from applying for relief." The Court further stated: "Prior administrative decisions of the Bureau of Immigration Appeals confirm the fact that permission to reapply is available on a

*nunc pro tunc* basis, in which the petitioner receives permission to reapply for admission after he or she has already reentered the country.” Finally the Court stated: “... if the alien has applied for permission to reapply in the context of an application to adjust status, the INS is required to consider whether to exercise its discretion in the alien’s favor before it can proceed with reinstatement proceedings...”

The record of proceedings does not reveal that the applicant’s prior removal order was reinstated at the time he filed the Form I-212. Since this case arises in the Ninth Circuit, *Perez-Gonzalez* is controlling. Based on the above the AAO finds that the applicant is eligible to file a Form I-212.

This office finds that although the applicant is not subject to section 212(a)(5) of the Act, he is clearly inadmissible under section 212(a)(9)(A) of the Act.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien’s departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, “Secretary”] has consented to the alien's reapplying for admission.

On appeal counsel states that at no time did the applicant give false information to an Immigration Officer. Counsel states that the applicant is unable to speak or understand English and responds to all conversation directed to her by saying “yes”. In addition counsel states that the applicant was attempting to pick up her American born children to return to Mexico when apprehended.

Counsel’s statements are not persuasive. The record of proceedings reveals that the applicant was interviewed on April 15, 1998, regarding her admissibility into the United States. The record or proceedings reflects that the interview was conducted in the Spanish language and the written sworn statement was read to her in the Spanish. During the interview the applicant admitted that she told an Immigration Inspector that she was a U.S. citizen in an attempt to enter the United States. In addition she stated that she had been residing in the United States for approximately two years. Furthermore she stated that she was removed form

the United States on April 13, 1998 and that at that time she understood that she was not allowed to apply for admission into the United States for a period of five years without the permission of the Attorney General.

As noted above the record reflects that the applicant represented herself twice to be a citizen of the United States in order to gain admission into the United States. Both times she made an oral claim to U.S. citizenship. The applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

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

(ii) Falsely claiming citizenship -

(I) In general- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) Exception- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

There is no waiver available under this section of the 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.

Notwithstanding the arguments on appeal the applicant was removed from the United States for having represented herself as being a U.S. citizen. The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, which is very specific and applicable. No waiver of the ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act is available to an alien who made a false claim to United States citizenship. 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 applicant is not eligible for any relief under the Act and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.