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

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FILE:

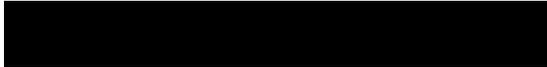


Office: CALIFORNIA SERVICE CENTER

Date: SEP 28 2005

IN RE:

Applicant:



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.

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 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 October 15, 1999, attempted to procure admission into the United States by fraud and willful misrepresentation of a material fact. The applicant presented a photo substituted Mexican passport containing a non-immigrant visa. 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 other valid entry document. Consequently 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 the applicant reentered the United States on an unknown date, but before July 6, 2000, the date she gave birth to her child, 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)(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 Lawful Permanent Resident (LPR) spouse. 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 remain in the United States and reside with her LPR spouse and U.S. citizen children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having been unlawfully present in the United States after a previous immigration violation and was not eligible for an exception or waiver under this section of the Act. The Director denied the Form I-212 accordingly. *See Director's Decision* dated October 29, 2004.

On appeal the applicant submits an affidavit, copies of the documentation she submitted previously and requests a personal interview in order to address the issues that surround the waiver application.

The regulations at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

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.

On appeal the applicant does not dispute the fact that she was expeditiously removed from the United States for trying to enter with another person's passport, but states that she did so due to her ignorance and total lack of knowledge of the immigration laws. The applicant states that if her application is not granted she will lose her home, family and marriage for a fault she unknowingly and mistakenly made. She further states that her spouse and children would not relocate with her if she were removed from the United States. In addition she states that employment opportunities in Mexico are minimal and non-existent and that she would probably end up living out of public charity.

The applicant's statement that she unknowingly and mistakenly violated the immigration laws is not persuasive. By her own declaration she admits that she contacted a smuggler and paid her \$2,000 in order to assist her to enter the United States illegally. After she failed to gain entry into the United States with a photo-substituted passport, she knowingly entered the United States illegally.

Since the applicant reentered the United States after she was expeditiously removed on October 15, 1999, without a lawful admission or parole and without permission to reapply for admission, she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, for having been unlawfully present in the United States after a previous immigration violation.

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 not eligible to apply for any relief under this Act unless 10 years pass after the date of her last departure from the United States and the Secretary has consented to the alien's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred in 1999, considerably less than ten years ago. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.