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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: SAN ANTONIO Date: AUG 15 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Antonio, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who, in 1989, applied for lawful permanent resident status through amnesty. In 1994, the applicant applied for and received a Border Crossing Card (BCC). The applicant failed to indicate in the application that she had ever applied for immigration benefits in the United States. On November 8, 1999, the applicant filed an Application for Nonimmigrant Visa (Form OF-156) in which she also failed to indicate that she had ever applied for immigration benefits in the United States. On the same day, the applicant was issued an L-1 nonimmigrant visa. On April 26, 2000, the applicant attempted to enter the United States by presenting the L-1 nonimmigrant visa. The applicant was refused admission and was excluded and ordered removed from the United States because she had obtained her nonimmigrant visa by fraud or misrepresentation of a material fact and was, therefore, seeking admission to the United States without possession of a valid nonimmigrant document. Consequently, on April 26, 2000, the applicant's visa was cancelled and she was expeditiously removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1). The applicant has since remained outside the United States. The district director found the applicant inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and the applicant 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 to attend work-related training as a B-1/B-2 nonimmigrant.

The district director determined that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has obtained a visa by fraud or misrepresentation of a material fact. The district director determined that the applicant was ineligible for a waiver of the 212(a)(6)(C)(i) grounds of inadmissibility and that no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States. The district director also determined that he could not adjudicate the application because the documentation filed by the applicant to support the Form I-212 was in Spanish and was not translated. The district director found that pursuant to 8 C.F.R. § 103.2(b)(3), all foreign documents must be accompanied by an English translation and he denied the Form I-212 accordingly. *See District Director's Decision* dated April 7, 2005.

On appeal, counsel contends that the applicant did not make a material misrepresentation on her application for an L-1 nonimmigrant visa on November 8, 1999, and that it has been more than five years since the applicant was removed from the United States. *See Form I-290B,* dated May 5, 2005. The Form I-290B indicated that counsel would submit a separate brief or evidence on appeal within the time allotted. On June 21, 2006, the AAO informed counsel that he had five days in which to submit additional documentation to support the appeal. At no time did counsel forward a brief and/or additional evidence to support the appeal. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is not inadmissible under section 212(a)(9)(A) of the Act and is not required to receive permission to reapply for admission.

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

(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 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.
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> (ii) 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 Secretary has consented to the alien's reapplying for admission.

The AAO finds that the applicant is an alien who has been expeditiously removed from the United States and would be inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) if she were seeking admission to the United States within 5 years after her removal from the United States. The applicant's expeditious removal occurred on April 26, 2000, more than 5 years ago. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

The AAO notes that the district director did not err in finding the applicant was required to apply for permission to reapply for admission to the United States because, at the time the Form I-212 was adjudicated, it had not yet been 5 years since the applicant's removal from the United States. A clear reading of the law reveals that the applicant is no longer inadmissible. She, therefore, does not require permission to reapply for admission, so the appeal will be dismissed, the decision of the district director will be withdrawn and the permission to reapply for admission application will be declared moot.

The AAO also notes that the applicant may be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who attempted to procure a visa, other documentation or admission to the United States by willful misrepresentation of a material fact or by fraud. As such, the applicant may need to file an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) to apply for a waiver of the 212(a)(6)(C)(i) inadmissibility grounds pursuant to section 212(d)(3) of the Act, 8 U.S.C. § 1182(d)(3).

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the application for permission to reapply for admission is declared moot.