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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

#4

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: OCT 05 2007

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after deportation or removal was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 reside in the United States with her two U.S. citizen children, U.S. citizen spouse and lawful permanent resident mother.

The district director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act as an alien who was previously removed on November 9, 1998. The district director also found that the applicant was inadmissible under 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States by fraud on November 7, 1998, and that the Form I-601, Waiver of Grounds of Inadmissibility submitted by the applicant in relation to this ground of inadmissibility was denied on February 30 [sic], 2006. The district director found that because the applicant's Form I-601 waiver was denied, there was no means for the applicant to overcome her inadmissibility for fraud. The district director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *See District Director's Decision,* dated June 12, 2006.

On appeal, counsel asserts that the district director failed to adequately consider all pertinent factors in the applicant's case, particularly the existence of the applicant's U.S. citizen spouse and the hardship to him; that the district director erroneously adjudicated the Form I-601 before the Form I-212; and that the district director erroneously considered the denial of the Form I-601 as a factor in denying the Form I-212. *Counsel's Brief,* dated August 7, 2006.

Counsel cites Section 212.7(a) of the Immigration and Naturalization Service's Operating Instructions in support of his assertions regarding the proper adjudication of the applicant's Form I-212 and Form I-601. The AAO notes that the Immigration and Naturalization Service's Operating Instructions have been replaced, in part, by the Adjudicator's Field Manual. In situations where an applicant must file a Form I-212 and a Form I-601, the Adjudicator's Field Manual states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual directs:

> If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

The AAO notes that the Form I-601 filed by the applicant was denied on February 30 [sic], 2006 and no appeal was submitted within the 30-day time period allowed by regulation, making the decision final. Accordingly, the district director's denial of the Form I-212 was proper as its approval would have served no purpose. The appeal will be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he or she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has not met this burden.

ORDER: The appeal is dismissed.