U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ATLANTA, GA Date: **SEP 2 4 2009**
RELATES)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Atlanta, Georgia, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider is dismissd. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who, on June 17, 1999, attempted to elude inspection at the San Ysidro, California port of entry by concealing herself in a vehicle. The applicant was placed into secondary inspection. The applicant admitted that she did not have valid documentation to enter the United States. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documentation. On June 17, 1999, 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) under her maiden name.

On June 20, 1999, the applicant again attempted to elude inspection at the San Ysidro, California port of entry by concealing herself in a vehicle. The applicant was placed into secondary inspection. On June 21, 1999, the applicant was paroled into the United States for the sole purpose of prosecuting the smuggler. The applicant's parole was extended until January 1, 2000. The applicant failed to depart the United States. On October 14, 2000, the applicant married her U.S. citizen spouse in Atlanta, Georgia.

On August 2, 2002, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of Act, 8 U.S.C. § 1231(a)(5). On October 29, 2002, a warrant for the applicant's removal was issued. On the same day, the applicant agreed to depart the United States by November 29, 2002. The applicant was issued a Departure Verification Form (Form G-146).[1] On September 14, 2004, the applicant filed the Form I-212, indicating that she continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 U.S. citizen spouse and U.S. citizen child.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for attempting to illegally reenter the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated December 13, 2007.

On May 21, 2009, the AAO dismissed the applicant's appeal because the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for attempting to illegally reenter the United States after having been removed and is not eligible to apply for permission to

[1] The AAO notes that the record does not contain a completed Form G-146 to establish that the applicant departed the United States. Furthermore, on December 12, 2005, the applicant testified that she last entered the United States in July 1999.

reapply for admission because she has not remained outside the United States for the required ten years. *Decision of AAO,* dated May 21, 2009.

In the motion to reconsider, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i) of the Act because she was not present in the United States for more than one year prior to her attempt to enter the United States on June 17, 1999, and she was paroled into the United States on June 21, 1999. *See Counsel's Motion to Reconsider.* In support of her motion to reconsider, counsel only submits the referenced motion to reconsider. The entire record was reviewed in rendering a decision in this case.

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

> (A) Certain aliens previously removed.-
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> (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) Other aliens.-Any alien not described in clause (i) who-
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> (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 who 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 on a 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 [Secretary of Homeland Security] has consented to the alien's reapplying for admission.
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> . . . .
>
> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
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> (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 [Secretary] has consented to the alien's reapplying for admission. The [Secretary], in the [Secretary's] discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the [Secretary] 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.

8 C.F.R. § 103.5(a) provides, in pertinent part:

> (2) *Requirements for motion to reopen.*
> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:
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> a. The requested evidence was not material to the issue of eligibility;
> b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
> c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation,

> or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.
>
> (3) *Requirements for motion to reconsider.*
> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In support of the motion to reconsider, counsel makes the same contentions that she made on appeal and which were clearly addressed by the AAO's decision. The AAO found counsel's contentions to be unpersuasive because the record clearly established that the applicant attempted to enter the United States without inspection on June 20, 1999, after she had been removed from the United States on June 17, 1999, thereby rendering her inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act. Whether the applicant was subsequently paroled into the United States does not affect whether she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Counsel's contention in regard to the applicant not accruing more than one year of unlawful presence in the United States prior to her removal on June 17, 1999, is not germane to the finding that the applicant is inadmissible for attempting to reenter the United States without inspection after having been removed from the United States. As such, counsel's contentions are unpersuasive and do not form a basis for a motion to reconsider.

After a careful review of the record, it is concluded that the applicant has failed to establish that the contentions submitted in the motion to reconsider meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider is dismissed and the order dismissing the appeal is affirmed.

ORDER: The motion to reconsider is dismissed. The order dismissing the appeal will be affirmed.