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

U.S. Citizenship and Immigration Services

[redacted]

#4

DATE: APR 2 6 2012 OFFICE: GUATEMALA CITY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Guatemala City, Guatemala, denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) on July 15, 2009. The director approved a motion to reopen or reconsider, and affirmed the previous denial decision on August 17, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was ordered removed from the United States *in absentia* on March 5, 1998. The record reflects the applicant voluntarily departed the United States in February 1998, and that she re-entered the United States illegally in February 1999. The applicant remained in the United States until August 10, 2007, when she was removed. The applicant was found to be inadmissible pursuant to section 212(a)(9)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i). She seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii).

In a decision dated July 15, 2009, the director determined the applicant failed to establish she had been outside of the United States for ten years since her last departure from the United States, and that accordingly, she was statutorily barred under section 212(a)(9)(C)(ii) of the Act, from applying for permission to reapply for admission. The Form I-212 was denied accordingly.[2]

On August 10, 2009, the applicant filed a motion to reopen or reconsider the denial of her Form I-212 and Form I-601 applications. The director approved the motion and determined, in a decision dated August 17, 2009, that new evidence overcame the inadmissibility finding under section 212(a)(6)(B) of the Act by demonstrating reasonable cause for the applicant's failure to attend her removal hearing. The director also determined that new evidence established that a qualifying relative would experience extreme hardship if the applicant were denied admission into the United States. Nevertheless, the director affirmed the July 15, 2009, decision denying the applicant's Form I-212 and Form I-601, based on the ten-year bar to applying for permission to reapply for admission under section 212(a)(9)(C) of the Act.

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[1] The Form I-290B, Notice of Appeal or Motion reflects that, rather than filing an appeal with the AAO, the applicant attempted to file a motion to reconsider with the Field Office Director in Guatemala. Initialed changes on the Form I-290B and a field office memorandum to the record indicate that after filing the motion, the applicant was advised to appeal her decision to the AAO. The AAO appeal was filed in a procedurally incorrect manner, and a separate Form I-290B should have been timely filed with the AAO pursuant to 8 C.F.R. § 103.3(a). Due to the present circumstances, however, the AAO will accept the matter as a timely filed appeal.

[2] The applicant also filed a Form I-601, Application for Waiver of Inadmissibility pursuant to sections 212(a)(6)(B) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(6)(B) and 1182(a)(9)(B)(v), and the director's July 15, 2009, decision jointly addresses and denies the applicant's Form I-212 and Form I-601. The applicant's Form I-290B does not specify which denial is being appealed. The AAO notes, however, that a section 212(a)(9)(C) of the Act ground of inadmissibility is addressed by applying for permission to reapply for admission. The present matter is therefore treated as an appeal of the applicant's Form I-212 denial.

On appeal, the applicant does not contest that an *in absentia* removal order was issued against her in March 1998, that she subsequently re-entered the U.S. illegally, and that she was removed from the U.S. in August 2007. The applicant asserts, however, that the *in absentia* removal order is invalid because she was not given proper notice of the order and it was issued while she was outside of the country. She asserts further that she was unaware of the removal order when she re-entered the United States, that her re-entry into the U.S. was based on domestic abuse in Guatemala and a fear for her life, and she indicates the order should not be considered in her case, and that section 212(a)(9)(C)(ii) of the Act should not apply to her. The applicant additionally asserts that the director's initial denial decision did not address her inadmissibility under section 212(a)(9)(C)(i) of the Act, and that she was thus unfairly denied an opportunity to address the issue on motion. To support her claims, the applicant refers to federal circuit court of appeals cases, and she submits letters from herself and family members explaining why she entered the U.S. and remained unlawfully in the country. The record also contains Spanish-language documentation.

8 C.F.R. § 103.2(b)(3) provides that:

> Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the Spanish-language documents are not accompanied by certified English translations, they cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal

The applicant's assertion that she was denied an opportunity to address her section 212(a)(9)(C)(i) of the Act inadmissibility on motion, is not supported by the record. According to the July 15, 2009 denial decision, "[the applicant is] not eligible for the exception to this inadmissibility ground pursuant to section 212(a)(9)(C)(ii) because 10 years have not passed since [her] last departure from the United States in August 2007." It is noted further that, had the director failed to address the issue, the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule"); *see also, Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F. 2d 997, 1002 n. 9 (2d Cir. 1989).

The applicant also asserts that the *in absentia* removal order against her is invalid because she was not given proper notice of the order and it was issued after she voluntarily departed the country. The proper venue to address this issue lies with the Executive Office for Immigration Review. *See* 8 C.F.R. §§ 1003.14 and 1003.23(b) (pertaining to issues of immigration court jurisdiction and

requirements for motions to reopen and motions to rescind.) The AAO does not have appellate jurisdiction over issues relating to the validity of removal orders issued by an immigration judge. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner.

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

> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
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> . . .
>
> (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.

In the present matter, the record reflects that the applicant voluntarily left the United States in February 1998, and that on March 5, 1998, while she was outside of the country, she was ordered removed. The applicant illegally returned to the U.S. in February 1999, and she remained in the U.S. until she was removed on August 10, 2007.

The applicant asserts that she was unaware of her removal order when she re-entered the United States, and she cites to *U.S. v. Bahena-Cardenas,* 411 F.3d. 1067 (9th Cir. 2005); *Cervantes-Gonzales v. INS,* 244 F.3d 1001 (9th Cir. 2001); and *U.S. v. Ubaldo-Figueroa,* 364 F.3d 1042 (9th Cir. 2004), to support her position that she must be made aware of her immigration violation to be held accountable for the consequences of the violation. The AAO notes, however, that the cited cases do not relate to section 212(a)(9)(C) of the Act, and they do not state or indicate that an applicant must be aware of an outstanding removal order in order to be inadmissible under section 212(a)(9)(C) of the Act. The AAO is unaware of case law that addresses the issue with regard to section 212(a)(9)(C) of the Act, and the Act contains no such provision. Accordingly, because the applicant was ordered removed, and she reentered the United States without being admitted, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The Board of Immigration Appeals held in *Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006) that an alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless she or he has been outside the United States for more than ten years since the date of the alien's last departure from the United States. To avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States *and* CIS has consented to the applicant's reapplying for admission. Here, the applicant's last departure from the United States occurred less than ten years ago, on August 10, 2007. Because the applicant has not remained outside of the U.S. for ten years since her last departure, she is statutorily ineligible to apply for permission to reapply for admission. The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.