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

U.S. Citizenship and Immigration Services

[redacted]

#4

DATE: FEB 2 1 2012 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [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:

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.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Nebraska Service Center, 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 as the Form I -212 is moot.

The record reflects that the applicant is a native and citizen of Mexico who was granted voluntary departure on August 12, 1985, her voluntary departure grant expired on November 12, 1985, and she departed the United States on December 2, 1985. The applicant was found to be inadmissible pursuant to section 212(a)(9)(A)(ii)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(II). 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 reside in the United States.

The acting director determined that the applicant's negative factors outweigh her positive factors and denied the Form I-212 accordingly. *Acting Director's Decision*, dated May 1, 2006.

On appeal, the applicant details her immigration history and favorable discretionary factors. *Form I-290B*, received May 30, 2006.

The record includes, but is not limited to, the Form I-290B, letters of support and evidence related to the applicant's departure to Mexico and residence in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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.
> >
> > (ii) Other aliens.-Any alien not described in clause (i) who-
> >
> > > (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 of an alien convicted of an aggravated felony) is inadmissible.

(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 has consented to the alien's reapplying for admission.

The record reflects that the applicant entered the United States without inspection on December 24, 1974; she was granted voluntary departure on August 12, 1985; her voluntary departure grant expired on November 12, 1985; she appealed her case to the Board of Immigration Appeals (BIA); she departed (i.e self-deported from) the United States on December 2, 1985; her appeal was withdrawn by the BIA on April 16, 1987 due to her departure from the United States; the Chicago District Director issued a warrant of deportation for the applicant on July 26, 1990; and the applicant entered the United States without inspection in 1996.

As the applicant was outside of the United States for more than 10 years between the date of her self-deportation and her 1996 entry, she is no longer inadmissible under section 212(a)(9)(A)(ii)(II) of the Act and is not required to file a Form I-212.

Section 212(a)(9)(C)(i) 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.

The AAO finds that the applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act as this section only applies to an applicant who is ordered removed before or after April 1, 1997, and who enters or attempts to reenter the United States unlawfully any time on or after April 1, 1997. However, the applicant re-entered the United States without inspection before April 1, 1997.

As the applicant is not inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, she is not required to file a Form I-212 and the appeal will be dismissed as moot.[1]

ORDER: The appeal is dismissed as the Form I-212 is moot.

[1] The AAO notes that in a separate decision, the Acting District Director, Milwaukee, Wisconsin, found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, which provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant was in possession of a counterfeit Form I-151, and that she used the counterfeit Form I-151 to apply for a social security card. However, there is no indication in the record that the applicant has sought to procure or has procured a visa, other documentation, or admission into the United States or other benefit provided under this Act. As such, it does not appear that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.