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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H4

DATE: JUN 1 1 2012 OFFICE: LOS ANGELES, CA [redacted]

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Prior Immigration Violations 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:

[redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Los Angeles, California denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II) because she attempted to reenter the United States without being admitted after she was ordered removed under section 235(b)(1) of the Act. 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 order to remain in the United States with her U.S. citizen spouse.

The director determined that the applicant did not meet the statutory requirements for an exception under section 212(a)(9)(C)(ii) of the Act and, accordingly, denied the Form I-212. *Decision of the Field Office Director,* dated March 5, 2010.

On appeal, the applicant states that the director should have considered her Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, on its merits.

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

> (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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

On November 4, 2001, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act, having been found inadmissible under section 212(a)(6)(C)(i) for misrepresenting her intent to visit the United States as a nonimmigrant when her actual intent was to reside and be employed in the United States. Thereafter, the applicant was barred from

entering the United States for five years. *Form I-860, Notice and Order of Expedited Removal,* dated November 3, 2001; *Form I-275, Withdrawal of Application for Admission/Consular Notification,* dated November 3, 2001; *Form I-296, Notice to Alien Ordered Removed/Departure Verification,* dated November 3, 2001. On February 28, 2002, the applicant attempted to reenter the United States without inspection through the San Ysidro Port of Entry, concealed in a vehicle. *Form I-213, Record of Deportable/Inadmissible Alien*, dated March 1, 2002. Based on this evidence, the AAO finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed from the United States and subsequently attempting to reenter the United States without being admitted.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006). In *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), the Ninth Circuit overturned its previous decision, *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), and deferred to the BIA's holding that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-year bar. Thus, 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 10 years ago, the applicant has remained outside the United States *and* CIS has consented to the applicant's reapplying for admission.

In the present case, the applicant is currently residing in the United States and has not remained outside the United States for 10 years since her last departure. She is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.