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

(b)(6)

DATE: JAN 14 2013 Office: PANAMA CITY FILE:

IN RE: Applicant:

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:

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 in accordance with the instructions on 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Panama City, Panama, 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.

The record reflects that the applicant entered the United States on December 22, 1992 as a conditional permanent resident. Her then-spouse, Mr. , filed a Petition to Remove Conditions on Residence, Form I-751 on the applicant's behalf on October 7, 1994. That petition was denied on May 16, 1995 due to Mr. failure to appear for a scheduled interview. The applicant was placed into removal proceedings and was ordered removed in absentia after failing to appear for a hearing on June 28, 1996. A warrant of deportation was entered against the applicant on August 20, 1996, but she failed to depart as ordered. The applicant divorced Mr. in December 1996 and married the qualifying spouse on October 11, 1998. The qualifying spouse filed a Petition for Alien Relative, Form I-130, on the applicant's behalf on November 21, 2002. The applicant filed an Application to Adjust Status, Form I-485, on November 13, 2005, but that application was denied due to the outstanding order of deportation against the applicant. On May 3, 2007, the applicant was apprehended by immigration authorities. She departed the United States under an order of deportation on August 2, 2009. She is therefore inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission within 10 years of the date of her removal. 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 U.S. citizen spouse.

Section 212(a)(9)(A) of the Act provides, 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 5 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
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> (II) departed the United States while an order of removal was outstanding, and 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 aliens convicted of an aggravated felony) is inadmissible.
>
> (ii) 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 continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

The applicant was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure. The applicant entered the United States as a conditional permanent resident on December 22, 1992. Her Petition to Remove Conditions on Residence was denied on May 16, 1995 and she was placed in removal proceedings, where she was ordered removed in absentia on June 28, 1996. She was later removed on August 2, 2009. The applicant does not contest this finding of inadmissibility, but rather seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse. The Field Office Director concluded that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the Form I-601 accordingly. *See Decision of Field Office Director*, dated September 29, 2011.

In a separate decision, the AAO dismissed an appeal of the denial of the applicant's Form I-601. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed.