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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 0 3 2013 OFFICE: SAN FRANCISCO, CA FILE:

IN RE: APPLICANT:

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application and application for permission to reapply for admission after removal were denied by the Field Office Director, San Francisco, California, and subsequent appeals were rejected by the Administrative Appeals Office (AAO) as untimely filed. The AAO then granted following motions, but denied the underlying applications. The matter is now before the AAO on a second motion. The motion will be granted, but the underlying applications remain denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 from the United States. She was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. The AAO additionally affirmed that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). The applicant seeks a waiver of inadmissibility and permission to reapply for admission into the United States after deportation or removal in order to reside in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(C) of the Act and denied the applications accordingly. *See Decisions of Field Office Director* dated June 19, 2009. The AAO rejected the following appeals as untimely, finding that the applicant filed the appeals 35 days after the decision was issued. *Decision of AAO,* April 4, 2011. Subsequent motions were granted, but the underlying applications remained denied as the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act. *Decisions of AAO on Motion,* November 6, 2012.

On this motion to reconsider, counsel contends the AAO erroneously concluded that the applicant was ordered removed in 1999, and that consequently, the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act. Counsel further asserts it is USCIS's burden to establish that a removal occurred, and that USCIS has not met its burden of proof.

Contrary to counsel's assertions, the record contains documentation establishing the applicant was ordered removed and her departure was verified. *See Form I-860, Order of Removal Under Section 235(b)(1) of the Act,* February 23, 1999, *see also Form I-296, Departure Verification,* February 23, 1999.[1] If the applicant would like a copy of these documented removal proceedings, she may obtain a copy of her record of proceeding by making a Freedom of Information / Privacy Act Request. *See Form G-639, Freedom of Information / Privacy Act Request.*

[1] Despite the fact that the applicant used the name ' in removal proceedings, the applicant's fingerprints and photograph identify her as the same person who presented herself to immigration officials as on February 23, 1999.

Furthermore, counsel's contention that it is the government's burden to demonstrate she was ordered removed is misleading. Although it is the government's burden to prove removability in removal proceedings, it is the applicant's burden of proof to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965); Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden of proof. Therefore, although the applicant's motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.