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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 0 9 2013 OFFICE: TUCSON FILE:

IN RE: Applicant:

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

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 Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) was denied by the Tucson, Arizona, Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Peru who attempted to enter the United States on June 6, 2005 from Mexico by using a fraudulent travel document, was expeditiously removed the same day to Mexico, and sought to enter without inspection or parole on June 8, 2005. She was expeditiously removed again on July 21, 2005, this time to Peru. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks permission to enter the United States as a permanent resident to live with her husband and family.

The field office director found the applicant to be inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), for seeking admission within 20 years of her second removal. Determining that the factors unfavorable to the applicant outweighed those favorable to her, the field office director found a discretionary consent for her to reapply to be unwarranted and, accordingly, denied the application.

On appeal, counsel contends that consent to reapply should be granted because the favorable factors outweigh the adverse factors and asserts that the denial erred in relying on inconclusive evidence and/or overstating the gravity of the applicant's immigration violations. In support of the appeal, counsel submits a brief and updated documentation including, but not limited to: the applicant's updated statement; records of the applicant's interactions with immigration authorities obtained through FOIA requests; a passport and visa; documentation of immigration status; and Spanish language documents. The record also contains documentation submitted in support of the original request for permission to reapply for admission. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(A) provides, pertinent part:

> (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 …) is inadmissible.
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> . . . .
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> (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 Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

It is uncontested that the applicant was denied entry to the United States on at least three occasions. First, on September 25, 2004, she was permitted to withdraw her application for admission, and departed the country voluntarily without being removed. Most recently, she was expeditiously removed on July 21, 2005, after having attempted to enter without inspection or parole on June 8, 2005. It is the nature of the applicant's second entry denial on June 6, 2005 which her counsel contests.

The record reflects that the applicant attempted to procure her June 6, 2005 admission by presenting the travel document of another person, a Mexican citizen,[1] as her own; the fraudulent document was detected by U.S. Customs and Border Protection (CBP); and the applicant was returned to Mexico. When she was apprehended on June 6, 2005, she stated her name was and she was a citizen of Ecuador, and the record shows that her expedited removal was recorded in the name of that alias. When subsequently apprehended two days later attempting to enter without inspection, the applicant continued to use the alias previously used, but later admitted having given a false name and nationality and revealed her true name. She was removed pursuant to an expedited removal order to Peru under her true name on July 21, 2005.

The AAO thus finds the applicant also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for attempting to reenter the United States without admission or parole after being ordered removed.

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

> (i) In general.-Any alien who-
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> > (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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> > (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
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> > and who enters or attempts to reenter the United States without being admitted is inadmissible.
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> (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.

[1] The applicant attempted to use another person's "laser visa," as B1/B2 visas issued to Mexican citizens on Border Crossing Cards are also known.

The applicant attempted to reenter the United States without being admitted after having been ordered removed on June 6, 2005. She sought to return illegally by entering without inspection or parole on June 8, 2005. The applicant, therefore, is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

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); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). 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 ten years ago, the applicant has remained outside the United States, *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant has remained outside the United States for less than eight years following her July 21, 2005 removal. She is currently statutorily ineligible to apply for permission to reapply for admission.

In proceedings for application for a visa or any other document required for entry, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed.

**ORDER:** The appeal is dismissed.