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

(b)(6)

U.S. Citizenship and Immigration Services

Date: OCT 2 1 2013 Office: SAN JOSE, CA 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
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 Field Office Director, San Jose, California, and the Administrative Appeals Office (AAO) dismissed an appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision withdrawn. The application for permission to reapply will be approved.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(A)(ii)(I) of the Act as an alien previously removed from the United States. The applicant is married to a U.S. citizen and seeks permission to reenter the United States after her removal in order to reside with her husband and children in the United States.

The field office director found that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and does not meet the requirements for consent to reapply because she is currently living in the United States. The field office director denied the application accordingly. The AAO dismissed the appeal, finding that although the applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act because her reentry into the United States pre-dated the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), the applicant is nonetheless inadmissible under section 212(a)(9)(A) as an alien previously removed, as well as section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The AAO dismissed the appeal based on the fact that the applicant's waiver application had been denied and, therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States.

On motion, counsel contends that the denial of the waiver application is being appealed and attached a copy of the appeal.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted documentary evidence to support the applicant's application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

(i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] . . . 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.

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

The record reflects that the applicant was ordered removed from the United States on October 13, 1995. She is therefore inadmissible under section 212(a)(9)(A) of the Act and requires consent to reapply for admission.

In a separate decision, the AAO has withdrawn the decision dismissing the appeal of the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601), which the applicant filed in relation to her inadmissibility under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is withdrawn. The application for permission to reapply is approved.