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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 0 3 2013 Office: DALLAS, TEXAS 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:

SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Dallas, Texas and the appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reopen. The motion is granted and the prior AAO decision is affirmed.

The applicant is a native and citizen of El Salvador who was found 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 having been removed twice from the United States and seeking readmission. The applicant was also found inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed under section 235(b)(1) of the Act and having reentered the United States without being admitted or paroled.

The director concluded that the applicant did not qualify for the exception under section 212(a)(9)(C)(ii) of the Act, because the applicant's last departure from the United States was less than ten years ago and therefore she could not apply for a waiver under section 212(a)(9)(C)(iii). The director denied the Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) accordingly. *See Decision of the Field Office Director,* dated September 15, 2010.

On appeal, the AAO concluded that the applicant is inadmissible under section 212(a)(9)(C)(ii) of the Act and could not apply for consent to reapply unless she remained outside of the United States for more than 10 years. *See Decision of the AAO,* dated March 15, 2011.

On motion, the applicant's father submits new facts and states that the United States consular officer in El Salvador reviewed certain documents in the applicant's case and stated that her entry on June 30, 2005 was not illegal and her deportation was unjustified. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed April 18, 2011, and received by the AAO on July 16, 2013.

A motion to reopen must state 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). The applicant's father explains the circumstances of the applicant's entry on June 30, 2005 with new facts. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2) and grants the motion to reopen.

The applicant's father states that a United States consular officer in El Salvador found that the applicant's attempted entry on June 30, 2005 was not illegal and her deportation was unjustified. The applicant's father also states that the applicant's interview on June 30, 2005 by an aggressive immigration officer led to misunderstandings in translations regarding whether the applicant was an intending immigrant when she came to visit him. The applicant's father asserts that the applicant's words in Spanish did not indicate that she intended to live permanently in the United States and her pattern of entry and timely departures support her claim. The applicant's father indicates that the applicant repeatedly came to the United States to avoid being harmed or killed, as country-condition reports in the record show a high level of violence against young women in El Salvador. Pursuant to 8 C.F.R. § 235.3(b)(2)(ii), the AAO does not have the authority to review expedited removal orders, such as the applicant's on June 30, 2005. This issue will, therefore, not be addressed in this decision. We must review the record as it stands, including her removal orders.

The record reflects that the applicant attempted to enter the United States on June 30, 2005 at Hidalgo, Texas with a valid Salvadorian passport and visitor visa for the United States.[1] She was found to be an intending immigrant and inadmissible under section 212(a)(7)(A)(i)(I) for not having valid documents to enter the United States as an intending immigrant. She was then expeditiously removed from the United States, which constitutes an order of removal, and barred from reentry for 5 years pursuant to section 212(a)(9)(A)(i) of the Act. The record reflects that on July 6, 2005 she attempted to reenter the United States at the Hidalgo, Texas port of entry, and was denied admission, but later was able to bypass immigration officers and illegally enter the United States. On July 7, 2005 she was stopped and apprehended at an immigration checkpoint and her prior order was reinstated pursuant to section 241(a)(5) of the Act. She was then barred from reentering the United States for 20 years under section 212(a)(9)(A)(i) of the Act. The record indicates that she was removed from the United States to El Salvador on September 2, 2005. The record does not indicate any subsequent reentry by the applicant.

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

....

(C) Aliens unlawfully present after previous immigration violations. -

(i) In general. - Any alien who -

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

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

....

Based on her illegal reentry on July 6, 2005 after having been expeditiously removed on June 30, 2005 the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

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[1] The AAO found in its previous decision that the applicant attempted to enter the United States with a Mexican passport. The AAO acknowledges this error as she clearly entered using her Salvadoran passport. The inspecting officer found that she was an intending immigrant, so, as noted in the prior AAO decision, she may also be inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States by fraud or willful misrepresentation of a material fact.

As the applicant remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act, she may not apply for consent to reapply for admission using Form I-212 until she remains outside the United States for more than 10 years since the date of her 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). The record indicates that the applicant's last departure from the United States occurred on September 2, 2005, less than ten years ago. The applicant is thus statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. §1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the prior AAO decision is affirmed.

ORDER: The motion is granted and the prior AAO decision is affirmed.