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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 27 2014 Office: FRESNO 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 (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 Field Office Director, Fresno, California, 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 sustained.

The record reflects that the applicant sought to procure admission the United States on January 14, 1996 using a U.S. permanent resident card which belonged to another person. The applicant was subsequently removed from the United States on or about January 22, 1996. The applicant claims that she reentered the United States without inspection in on or about February 3, 1996, and the record shows that the applicant gave birth to her first child on November 3, 1996 in Los Angeles, California. The applicant is 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) as an alien who was previously removed from the United States. 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 lawful permanent resident spouse, U.S. citizen children, and lawful permanent resident parents.

The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant attempted to enter the United States on January 14, 1996 using a U.S. resident card which belonged to another person. The applicant sought a waiver of inadmissibility (Form I-601) under sections 212(i) of the Act in order to reside in the United States with her lawful permanent resident spouse, U.S. citizen children, and lawful permanent resident parents. The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *See Decision of the Field Office Director,* dated September 21, 2013. In a separate decision on the same date, the Field Officer Director denied the application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act based on the denial of the Form I-601.

We note that the Field Office Director denied the applicant's Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) solely based on the denial of the Application for Waiver of Admissibility (Form I-601). As we have, in a separate decision, now found the applicant eligible for a waiver of inadmissibility under section 212(i) of the Act, we will withdraw the Field Office Director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act provides, in pertinent part:

> (A) Certain alien previously removed.-
>
> > (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.

(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 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.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' 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 aliens' reapplying for admission.

On or about January 22, 1996, the applicant was removed from the United States. As such, she is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. In a separate decision, we 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, we find 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 appeal is sustained.