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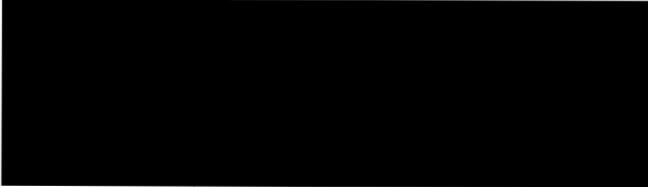
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

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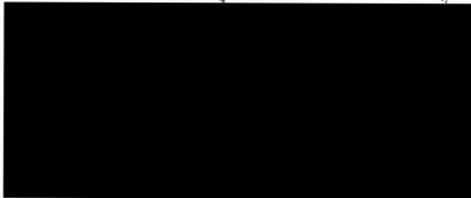


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 04 2006

IN RE: Applicant: [Redacted]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Singapore who was admitted into the United States as a non-immigrant visitor for pleasure on September 25, 1993, with an authorized period of stay until March 24, 1994. On March 30, 1994, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589) with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)). The applicant failed to appear for an asylum interview and on December 14, 1999, a Notice to Appear (NTA) for a hearing before an immigration judge was issued. On January 12, 2000, the applicant failed to appear for a removal hearing and she was subsequently ordered removed in absentia by an immigration judge, pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1)(B) for having remained in the United States longer than permitted. The record reflects that an Immigrant Petition for Alien Worker (Form I-140) filed on behalf of the applicant was denied on January 26, 1998, and an appeal was dismissed by the AAO on July 14, 1998. The applicant applied for a change of status from a visitor for pleasure to that of an alien of extraordinary ability (O-1). The applicant's change of status was granted and it was valid from October 3, 1997, to June 27, 2000. In addition, a Petition for a Nonimmigrant Worker (Form I-129) was approved and was valid from January 27, 2000 to November 15, 2002. A subsequent I-140, Immigrant Petition for Alien Worker of extraordinary ability was later denied. The record of proceedings reflects that the applicant departed the United States in July 2001 and, as such, executed the pending order of removal. The applicant was admitted under the Visa Waiver Pilot Program (VWPP) on August 7, 2001, without permission to reapply for admission. The applicant departed the United States, on an unknown date, and on November 5, 2001, she applied for admission into the United States. She was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa. On July 30, 2004, the applicant applied for admission at the Newark, New Jersey, International Airport, under the VWPP. The applicant was again found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act and she was removed from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. She is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 travel to the United States and reside with her U.S. citizen spouse.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones and denied the Form I-212 accordingly. *See Director's Decision* dated May 4, 2005.

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

(A) Certain alien previously removed.-

. . . .

(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 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 [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel submits an affidavit signed by the applicant, copies of checks paid to various immigration lawyers, and documentation regarding the applicant's various applications. In the affidavit, the applicant's counsel states that while in the United States the applicant was always in legal status and was misled by various immigration attorneys who according to her should be convicted for cheating and scheming. Counsel submits copies of checks payable to attorneys, and copies of Notices of Action (Form I-797), as proof of the applicant's legal status in the United States. Counsel states that the applicant was given wrong advice by the immigration representatives, lawyers and other individuals and she is not trying to abuse the system. Counsel further states that the applicant attempted to reenter the United States on July 30, 2004, because she was told at the Embassy in Singapore that a visa was not required. In addition, counsel states that the applicant is a victim of wrong information given to her and she is being wrongly accused of disregarding or abusing the immigration laws. Additionally, counsel states that the applicant was mistreated by immigration officials at the Newark, New Jersey, International Airport and at the American Embassy in Singapore. Finally, in the affidavit the applicant states that: "It is illegal of the USA-immigration to separate real bona-fide marriages, due to jealousy, prejudices, ignorance and laziness to read carefully and look up documents/files, and this is the cause of many broken families and dysfunctional people in the USA."

The AAO conducts the final administrative review and enters the ultimate decision for CIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. See *Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003).

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. To recapitulate, on January 12, 2000, the applicant was ordered removed from the United States. She departed the United States in June 2001 and, as such, executed the removal order. The applicant was admitted into the United States on August 7, 2001, in error, and applied for admission on two other occasions without permission to reapply for admission. Therefore, she is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

The AAO notes that the record of proceedings contains a Record of Sworn Statement in Administrative Proceedings (Form I-877) in which the applicant admitted under oath that when she applied for a

nonimmigrant visa at the American Embassy in Singapore they told that she was not allowed to reenter the United States because she overstayed her visa. In addition, she stated that she was denied a United States visa "once or twice."

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

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

(i) In general. -Any alien who-

(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. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not apply for consent to reapply unless more than ten years have elapsed 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). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying for admission. The applicant is currently 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 the applicant is eligible for the benefit sought. The applicant in the instant case does not qualify for an

exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.