



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 16 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:
[REDACTED]

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, Director
Administrative Appeals Office

¹ The applicant in this case had two A files, A76 163 124 and A95 522 615, which were consolidated. After the files were consolidated the applicant's A number was determined to be A76 163 124. The applicant should refer to this A number in any future correspondence.

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Acting Director, Vermont 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 Ecuador who on September 24, 1999, at the New York City, Port of Entry, applied for admission into the United States. The applicant presented a photo switched passport. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. Consequently, on September 25, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date. She married a U.S. citizen on February 5, 2001 in Yorktown, NY. She also had two children in the United States, one on February 15, 2001 and the other on September 5, 2003. 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 remain in the United States and reside with her U.S. citizen spouse and children.

The Director determined that no purpose would be served in approving the applicant's I-212 because the applicant is statutorily ineligible for a waiver of inadmissibility. The Director stated that the applicant was not eligible for a waiver of inadmissibility because she had no qualifying relative. The Director concluded that the applicant's U.S. citizen spouse could not be considered a qualifying relative because the marriage occurred after her removal from the United States. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated October 1, 2004.

On appeal, counsel asserts that the Director erred in denying the applicant's Form I-212 after finding the applicant statutorily ineligible for a waiver of inadmissibility and that the applicant is eligible for both forms of relief. *Counsel's Appeals Brief*, dated December 26, 2004.

The AAO notes that the Director erred in concluding that the applicant was statutorily ineligible for a waiver of inadmissibility because her marriage to a U.S. citizen occurred after her removal from the United States. Regardless of when a marriage takes place, an applicant married to a U.S. citizen is statutorily eligible to apply for a waiver of inadmissibility.

The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal and, therefore, the AAO will not further discuss the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. These proceedings are limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A)(i) of the Act to be waived.

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

(A) Certain aliens 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 five 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.

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

The applicant was removed from the United States on September 25, 1999. Thus, the applicant is clearly inadmissible under 212(a)(9)(A)(i) of the Act. However, because the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission after previously being removed, she is now also subject to section 212(a)(9)(C) of the Act.

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. 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) of the Act may not apply for permission to reapply unless more than 10 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) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that the Service has granted permission for the applicant to reapply for admission. The applicant's last departure was in 1999, less than ten years ago. Therefore, 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 did not meet this burden. 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.