

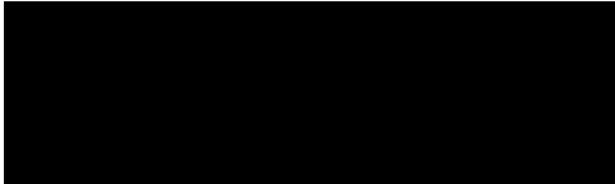
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

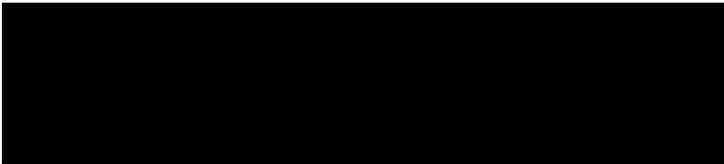
AUG 27 2007

IN RE:



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 Director, Vermont Service Center, 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 The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who, on February 2, 2001, married her spouse, [REDACTED]. On March 12, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On May 21, 2002, the applicant was placed into proceedings. On February 14, 2003, the immigration judge granted the applicant's request for cancellation of removal. The legacy Immigration and Naturalization service (now Immigration and Customs Enforcement (ICE)) appealed to the Board of Immigration Appeals (BIA). On March 7, 2005, the BIA vacated the immigration judge's decision to grant the applicant cancellation of removal and granted the applicant 30 days of voluntary departure. The applicant filed a request for extension of her voluntary departure, which was granted until June 30, 2005. On June 2, 2005, the Form I-130 was approved and the applicant filed a motion to reopen proceedings with the BIA. On July 1, 2005, the applicant left the United States and returned to Mexico, where she has since resided. On August 11, 2005, a warrant for the applicant's removal was issued. On September 12, 2005, the applicant filed the Form I-212. The director found the applicant 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) and the applicant 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 return to and reside in the United States with her U.S. citizen spouse and children.

The director determined that the unfavorable factors outweighed the favorable factors and denied the Form I-212 accordingly. *See Director's Decision* dated June 5, 2006.

On appeal, counsel contends that the director erred and abused his discretion in denying the applicant's application for permission to reapply for admission. *See Counsel's Brief*, dated June 19, 2006. In support of the appeal, counsel submits the referenced brief, an affidavit from the applicant's spouse and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(A) of the Act and she is, therefore, not required to receive permission to reapply for admission at this time.

Section 212(a) 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.

- (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 on a 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 director based the finding of inadmissibility under section 212(a)(9)(A) of the Act on the BIA's March 7, 2005, order granting the applicant voluntary departure and the applicant's failure to comply with the extended voluntary departure by June 30, 2005. The record reflects that, on July 19, 2005, the BIA granted the applicant's motion to reopen proceedings and remanded the applicant's case to the immigration judge for adjudication of her application for adjustment of status based on the approved Form I-130. A master calendar hearing was scheduled for September 28, 2006. As such, the AAO finds that the applicant is not subject to a final order of removal and is not inadmissible pursuant to section 212(a)(9)(A) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for permission to reapply for admission to the United States because there is no evidence in the record that the applicant is subject to a final order of removal or has ever been removed from the United States. Since the applicant does not require permission to reapply for admission, the appeal will be dismissed, the decision of the director will be withdrawn and the permission to reapply for admission application will be declared moot.

Counsel's brief indicates that the applicant may be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having entered the United States in 1989 and remained without status until her departure on July 1, 2005. The AAO notes that a waiver of unlawful presence pursuant to section 212(a)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) is appropriately considered at the time the applicant seeks a visa to enter the United States.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the application for permission to reapply for admission is declared moot.