



U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy

[REDACTED]

FILE:

[REDACTED]

Office: SEATTLE (SPOKANE, WA) Date: **AUG 06 2008**  
RELATES)

IN RE:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Seattle, Washington 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 applicant is a native and citizen of Mexico who, on April 11, 1996, appeared at the Otay Mesa, California Port of Entry. The applicant presented a counterfeit Form I-94 Arrival/Departure Verification Form and I-551 lawful Permanent Resident stamp. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to obtain admission to the United States by fraud and being an immigrant without valid documents. The applicant was placed into immigration proceedings. On the same day, the immigration judge ordered the applicant removed from the United States. On April 11, 1996, the applicant was removed from the United States and returned to Mexico. On May 20, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on her behalf by her then-husband, [REDACTED]. In response to a request for further evidence, the applicant testified that she reentered the United States without a lawful admission or parole and without permission to reapply for admission on an unknown date, but within one month of her removal from the United States in 1996. On June 8, 1999, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advanced parole authorization to depart and return to the United States on June 24, 1999, and October 7, 1999. On August 1, 2000, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued. On August 3, 2000, a warrant for the applicant's removal was issued. The applicant filed a motion to stay removal with the Ninth Circuit Court of Appeals (Ninth Circuit). On August 3, 2000, the Ninth Circuit granted a temporary stay of removal. On December 18, 2000, the Ninth Circuit granted the applicant's motion for stay of removal. On December 18, 2001, the Ninth Circuit granted the legacy Immigration and Naturalization Services' (INS) motion to remand for further consideration of whether to continue with reinstatement. On March 29, 2004, the applicant filed the Form I-212. On August 17, 2004, the applicant divorced [REDACTED]. On June 28, 2007, the applicant's Form I-130 was revoked. On July 16, 2007, the applicant's Form I-485 was denied because the underlying Form I-130 was revoked. On the same day, the applicant was again placed into immigration proceedings, which remain pending. 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). 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 return to the United States and reside with her two U.S. citizen children.

The district director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). The district director determined that the applicant was statutorily ineligible to apply for permission to reapply for admission to the United States because she had not remained outside the United States for a period of ten years prior to her application and denied the Form I-212 accordingly. *See District Director's Decision* dated June 17, 2004.

On appeal, counsel contends that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(9)(C) of the Act. *See Counsel's Letter*, dated July 13, 2004. In support of his contentions, counsel submits the referenced letter and a copy of legal memorandum. The entire record was reviewed in rendering a decision in this case.

The AAO finds that the district director erred in finding that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act. In order to be found inadmissible pursuant to section 212(a)(9)(C) of the Act,

an applicant, while he or she may have been ordered removed prior to April 1, 1997, must have *unlawfully* reentered the United States or attempted *unlawful* reentry after April 1, 1997, the effective date of the provision. See *Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs* dated June 17, 1997. The AAO, therefore, finds that the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act because her unlawful reentry into the United States occurred prior to April 1, 1997. The applicant's entries pursuant to Advanced Parole are legal and do not render her inadmissible pursuant to section 212(a)(9)(C) of the Act. Still, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act and must receive permission to reapply for admission.

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.
- (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 record reflects that the applicant is no longer married to [REDACTED]. The AAO notes that the record contains declarations from the applicant and [REDACTED] in regard to the hardship their separation would cause if the applicant was denied permission to reapply for admission. Since [REDACTED] can no longer be considered a positive factor, the AAO will not address the contents of these documents in regard to the relationship between the applicant and [REDACTED]. The applicant has a 21-year old daughter who is a native and citizen of Mexico who does not appear to have any legal status in the United States. The applicant has a 17-year old son and a 15-year old son who are both U.S. citizens by birth. The applicant is in her 30's.

The AAO now turns to a consideration of positive and adverse factors in the present case.

The applicant, in her declaration, states that she knows she entered the United States without permission when she first came and then later after she visited her daughter in Mexico. She states that she thought that she and her husband were doing things correctly when he applied for her immigrant visa. She states that she was given Advanced Parole. She states that she thought that, since it had been more than one year since her removal from the United States, she could apply for adjustment of status. She states that it came as a great shock when she was informed that she did not have permission to be in the United States. She states that if she has to return to Mexico it will be very difficult for her and her family. She states that her children are in school and she does not know what they will do.

, in his declaration, states that his children are growing up and are in school. He states that they could not transfer back to Mexico.

The applicant's Biographical Information Sheet (Form G-325) indicates that she was employed in the United States from September 1994, until September 1998. Tax records reflect that the applicant has paid federal taxes from 1996 through 1998. The applicant was issued employment authorization from May 20, 1999, until May 19, 2001.

The applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing unlawful presence from April 1, 1997, the date of enactment of unlawful presence provision under the Act, and May 20, 1999, the date on which she filed an affirmative application for adjustment of status, and seeking admission within ten years of her last departure from the United States in 1999. The applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on her attempt to enter the United States by fraud on April 11, 1996. Inadmissibility pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act may be waived pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), respectively. Section 212(a)(9)(B)(v) and 212(i) waivers are dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute. The applicant, on the Form I-212, indicates that she does not have a U.S. citizen or lawful permanent resident parents and the record reflects that she has divorced her qualifying spouse. It appears that the applicant has no qualifying family members on which to base a waiver request under section 212(a)(9)(B)(v) or 212(i) of the Act. However, if the applicant does have a qualifying family member she may seek a waiver of inadmissibility under section 212(a)(9)(B)(v) and 212(i) of the Act by filing an Application for Waiver of Ground of Inadmissibility (Form I-601).

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this

country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work in the United States unlawfully. *Supra*.

*Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

As established by the record, the favorable factors in this matter are the applicant's two U.S. citizen children, the general hardship to her family, and her payment of federal taxes.

The AAO finds that the unfavorable factors in this case include the applicant's original illegal entry into the United States; her illegal reentry into the United States after removal; her extended unlawful presence and employment in the United States; and her inadmissibility pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act.

The applicant in the instant case has multiple immigration violations. Moreover, the record fails to establish that she is the beneficiary of any immigrant or nonimmigrant visa petition that would offer her a means of acquiring lawful residence in the United States. The totality of the evidence demonstrates that the favorable factors in the present matter are outweighed by the unfavorable factors.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.