U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 29 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center. The appeal was summarily dismissed by the Administrative Appeals Office (AAO) on March 8, 2007 because the applicant had failed to submit a brief or additional evidence as indicated in her Form I-290B, Notice of Appeal. The matter will be reopened *sua sponte* based on information indicating that a brief had been timely submitted. The March 8, 2007 decision of the AAO will be withdrawn. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who applied for admission into the United States on May 10, 2000, at the Houston International Airport. She was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (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 May 11, 2000, 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). On June 11, 2000, the applicant claimed to be a U.S. citizen at the Gateway Bridge in Brownsville, Texas seeking to gain admission to the United States. As such, the applicant was deemed inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing herself to be a U.S. citizen in order to obtain a benefit under the Act. The applicant was again expeditiously removed from the United States. The applicant reentered the United States shortly after her removal, without lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326.

The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen child. She presently seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director determined that the applicant was inadmissible to the United States and not eligible for any exception or waiver. The Director further found that the unfavorable factors in the applicant's case outweighed the favorable factors. Accordingly, the Director denied the applicant's application for permission to reapply for admission after removal. *See Decision of the Director.*

On appeal, the applicant, through counsel, contends that she is not inadmissible under section 212(a)(6)(C)(ii) for falsely claiming U.S. citizenship in order to gain admission to the United States. *See Applicant's Appeal Brief.* The applicant further contends that she should be granted permission to reapply for admission on account of her family ties, employment and long-time residence in the United States. *Id.*

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides:

> Aliens previously removed.-
>
> (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.

. . .

> (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.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

The Director determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(6)(A), 212(a)(6)(C)(ii), 212(a)(9)(B)(i) and 212(a)(9)(C) of the Act, 8 U.S.C. §§ 1182(a)(6)(A), 1182(a)(6)(C)(ii), 1182(9)(B)(i) and 1182(a)(9)(C). The Director further found the applicant to be ineligible for any exception or waiver. Despite the applicant's contentions, the record supports the Director's inadmissibility finding. Specifically, the record contains, among other things, a Form I-867A, Record of Sworn Statement, prepared on June 11, 2000, where the applicant admits that she told the inspecting officer that she was born in Houston. The AAO notes that no waiver is available for inadmissibility under section 212(a)(6)(C)(ii).

Having found the applicant to be inadmissible to the United States, and ineligible for a waiver of inadmissibility, the Form I-212 was properly denied by the Director. *See Matter of Martinez-Torres,* 10 I&N Dec. 776 (Reg. Comm. 1964) (holding that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application).

The AAO further notes, and agrees with, the discretionary analysis in the Director's decision. 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 or Removal:

> 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 unlawfully. *Id.*

The favorable factors in this matter are the applicant's U.S. citizen children and grandchildren, and the approval of a petition for alien relative. The unfavorable factors include the applicant's attempts to illegally enter and remain in the United States. The applicant has not established that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that 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 March 8, 2007 decision of the AAO is withdrawn. The appeal is dismissed.