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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

H4

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 14 2008

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 applicant is a native and citizen of Mexico whose mother, on July 9, 1997, filed an Application for Asylum and for Withholding of Deportation (Form I-589). The applicant was included as a dependent on the Form I-589. The applicant's mother indicated on the Form I-589 that the applicant had entered the United States without inspection in May 1987. On August 15, 1997, the Form I-589 was referred to the immigration judge and the applicant was placed into immigration proceedings with her mother. On August 13, 1998, the immigration judge granted the applicant voluntary departure until October 13, 1998. The applicant's mother filed an appeal with the Board of Immigration Appeals (BIA). On May 31, 2002, the BIA dismissed the appeal and granted voluntary departure for a period of 60 days from the date of the decision. The applicant failed to surrender for removal or depart from the United States, thereby changing the grant of voluntary departure to a final order of removal. The applicant filed a motion to reopen with the BIA. On July 31, 2002, the BIA denied the applicant's motion to reopen. On August 13, 2005, the applicant married her U.S. citizen spouse, [redacted]. On September 12, 2005, the applicant filed the Form I-212. 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 reside in the United States with her U.S. citizen spouse and children.

The director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without inspection for which there is no waiver available, and section 212(a)(9)(A) of the Act, as an alien previously ordered removed from the United States. The director also found that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director's Decision* dated March 30, 2007.

On appeal, counsel contends that the director failed to properly weigh the evidence in regard to exercising her discretion. *See Counsel's Brief,* dated May 14, 2007. In support of his contentions, counsel submits the referenced brief, letters from family, friends and acquaintances, birth certificates, medical documentation and documentation previously provided. The entire record was considered in rendering a decision in this case.

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

> (6) Illegal entrants and immigration violators.-
>
> (A) ALIENS PRESENT WITHOUT admission or parole.-
>
> (i) In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.
>
> (ii) Exception for certain battered women and children.-Clause (i) shall not apply to an alien who demonstrates that-
>
> (I) the alien qualifies for immigrant status under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1)

(II) (a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

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 AAO notes that an exception to section 212(a)(6)(A)(i) of the Act is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such. The record and a review of relevant Citizenship and Immigration Services' (CIS) data bases fail to establish that the applicant is the

beneficiary of any immigrant or nonimmigrant visa petition that would offer her a means of acquiring lawful residence in the United States. Accordingly, the applicant is not the beneficiary of an immigrant visa petition or labor certification filed as of April 30, 2001 that would render her inadmissibility moot pursuant to section 245(i) of the Act. Aliens present within the United States without admission or parole are statutorily ineligible for a waiver of inadmissibility. Therefore, if an alien is present in the United States without admission or parole, the alien is subject to a permanent ground of inadmissibility.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964) held 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 applicant is subject to the provisions of section 212(a)(6)(A)(i) of the Act, which are very specific and applicable. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

The AAO notes that counsel indicates that the applicant will consular process her family-based visa petition once it is filed and approved. When the applicant departs the United States in order to consular process the family based petition, she will also become inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, for accumulating more than a year of unlawful presence, from January 22, 2005, the date on which she became 18 years old, to the date on which she departs the United States, and seeking admission within ten years of her departure. To seek a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), the applicant will need to file an Application for Waiver of Ground of Inadmissibility (Form I-601) in conjunction with a new Form I-212 in order to seek permission to reapply for admission. Both waiver requests should be submitted to the U.S. consulate having jurisdiction over the applicant's place of residence in Mexico. *See* 8 C.F.R. § 212.2(d).

ORDER: The appeal is dismissed.