

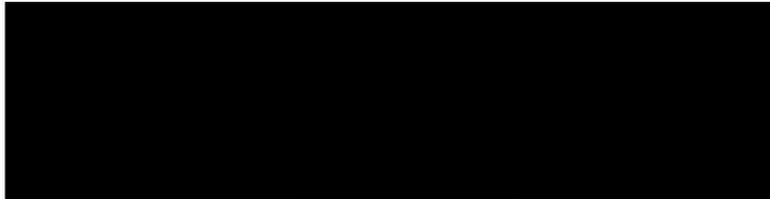
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FILE:

Office: CALIFORNIA SERVICE CENTER

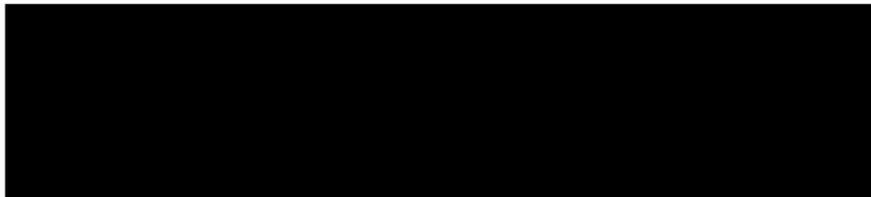
Date: **JUL 14 2008**

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 The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of the Philippines who, on January 14, 2003, appeared at the San Francisco International Airport. The applicant presented her Filipino passport containing a fraudulent backdated entry stamp into the Philippines. 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 January 15, 2003, 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), and returned to the Philippines, where she has since resided. On August 21, 2004, the applicant married her U.S. citizen spouse, [REDACTED]. On November 21, 2004, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on February 16, 2005. On January 30, 2007, the applicant filed the Form I-212. 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 enter the United States and reside with her U.S. citizen spouse and child, and her lawful permanent resident mother.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director then denied the Form I-212 accordingly. *See Director's Decision* dated May 19, 2007.

On appeal, counsel asserts that the denial of the applicant's application for permission to reapply for admission is unfounded because the applicant's removal from the United States was invalid. *See Counsel's Brief*, dated July 17, 2007. In support of his contentions, counsel submits only the referenced brief and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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 applicant is an alien who has been expeditiously removed from the United States under section 235(b) of the Act and would be inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) if she were seeking admission to the United States within five years after her removal from the United States. The applicant's expeditious removal occurred on January 15, 2003, more than five years ago. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act and does not require permission to reapply for admission. Accordingly, the appeal will be dismissed, the decision of the director will be withdrawn and the application for permission to reapply for admission will be declared moot.

The AAO notes that the proceedings in the present case are limited to the applicant's application for permission to reapply for admission into the United States after deportation or removal. Therefore, the AAO has not considered the applicant's potential grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act. To apply for a waiver of a section 212(a)(6)(C)(i) inadmissibility, an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

**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.