

identifying information to
prevent clearly unwarranted
invasion of personal privacy

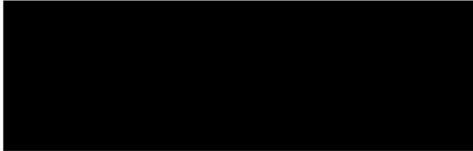
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4



FILE:



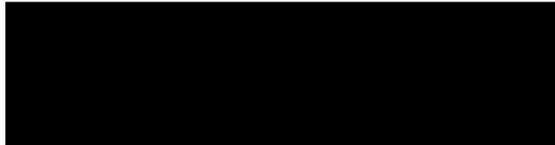
Office: CALIFORNIA SERVICE CENTER

Date: SEP 10 2008

[consolidated therein]

IN RE:

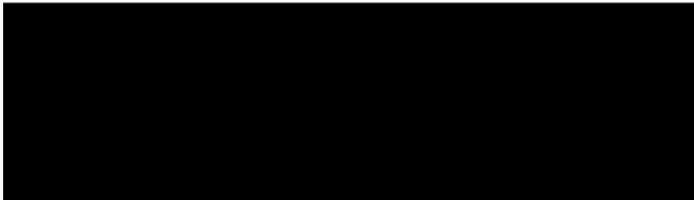
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 application for permission to reapply for admission after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. Based on the applicant's Application to Register for Permanent Resident or Adjust Status (Form I-485), she initially entered the United States without inspection in June 1989. On an unknown date, the applicant departed the United States. On January 24, 1999, the applicant attempted to enter the United States by presenting a counterfeit I-551 stamp. On January 24, 1999, the applicant was expeditiously removed from the United States. In response to a Request for Evidence, the applicant states she reentered the United States without inspection on January 26, 1999. On October 15, 2002, the applicant filed a Form I-485. On September 20, 2004, the applicant's Form I-485 was denied. On May 23, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). The applicant is inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). She now 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 with her lawful permanent resident husband and children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), for being present in the United States without admission or parole; section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for attempting to enter the United States by misrepresentation; section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for being unlawfully present in the United States; section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for being ordered removed from the United States and reentering without being admitted; and section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A), for being previously removed from the United States. The Director found that the unfavorable factors in the applicant's case outweighed the favorable factors, and she denied the applicant's Form I-212 accordingly. *Director's Decision*, dated July 24, 2007.

The relevant statutes state in pertinent part:

Section 212(a)(9). 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 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 [Secretary] has consented to the aliens' reapplying for admission.

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .
(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

Section 212(a)(6)(A). 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 [now, Secretary, Department of Homeland Security], is inadmissible.

Section 212(a)(6)(C) -

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 permanent 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 AAO notes that counsel relies on *Pichardo v. INS*, 216 F.3d 1198 (9th Cir. 2000), to demonstrate that the applicant's "charge of misrepresentation under 8 U.S.C. Section 1182(a)(6)(C)(i) is an offense that may be waived by the Attorney General (AG)...[The applicant's] case is analogous to *Pichardo* in that the government did not give her notice of whether she was being charged with the nonwaivable offense of false citizenship or the waivable offense of misrepresentation. This lack of notice was a deprivation of her due process rights and requires a remand." *Appeal Brief*, pages 6-7, filed September 17, 2007. The AAO concurs with counsel that a charge under section 212(a)(6)(C)(i) of the Act is a waivable offense; however, the applicant would file an Application for Waiver of Grounds of Excludability (Form I-601) in order to waive that ground of inadmissibility, and there is no evidence in the record that she has filed a Form I-601. The AAO notes that there is no indication that the applicant made a false claim to United States citizenship; and, moreover, she was not charged with violating section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). The AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), in that she attempted to enter the United States by presenting a counterfeit I-551 stamp.

Counsel claims that the applicant's husband "relies very heavily on [the applicant] and depends on her to help him with the care and custody and guidance of their two teenage children and their young adult son...There is no way that [the applicant's husband] will be able to provide the counseling and guidance for them." *Id.* at 2. Counsel states that "[w]ith two children to support and care for, it is extremely difficult for the family to make ends meet financially and to provide an emotionally stable environment." *Id.* The AAO notes that regarding the hardship the applicant's family may face, unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's family, but it will be just one of the determining factors. Counsel states the applicant has "been continuously physically present in the US for more than 19 years." *Id.* at 6. The AAO notes that the numerous years that the applicant has been present in the United States were without authorization and that is an unfavorable factor. The AAO notes that the applicant submitted evidence that she has worked as a babysitter; however, the applicant's employment was without authorization and that is an unfavorable factor. *See*

affidavit from [REDACTED], dated November 18, 2005; see also affidavit from [REDACTED] dated November 8, 2005; see also affidavit from [REDACTED], dated August 7, 2007.

The record of proceedings reveals that on January 24, 1999, the applicant was expeditiously removed from the United States. On January 26, 1999, the applicant reentered the United States without inspection. Based on the applicant's expedited removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(i) of the Act.

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 unlawfully. *Id.*

The favorable factors in this matter are the applicant's family ties to her lawful permanent resident husband and children, general hardship they may experience, letters of recommendations, and no criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, her use of a counterfeit I-551 stamp in order to obtain entry into the United States, her illegal reentry into the United States subsequent to her January 24, 1999, and periods of unauthorized presence and employment.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence 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 he 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.