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

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: PHILADELPHIA [consolidated therein] Date: SEP 1 2 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who last entered the United States on August 25, 1981, on a F-1 student visa. On November 12, 1981, the applicant filed a Request for Asylum in the United States (Form I-589). On August 12, 1985, the applicant was convicted of petty theft, and sentenced to one (1) year probation and a fine. On September 25, 1986, the applicant was convicted of reckless driving, and sentenced to ninety (90) days in jail and thirty-six (36) months probation. On April 15, 1987, the applicant's United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application Permanent Residence (Form I-485). On June 19, 1987, the applicant's husband withdrew the Form I-130 based on marriage fraud. On June 23, 1987, the applicant's Form I-485 was denied.

On April 6, 1988, the applicant filed an Application for Temporary Resident Status (Form I-687), which was approved on October 4, 1988. On May 24, 1988, the applicant divorced her first husband. On July 3, 1989, the applicant filed an Application to Adjust from Temporary to Permanent Resident (Form I-698), which was granted on October 6, 1989. On May 1, 1994, the applicant filed an Application for Naturalization (N-400). On March 26, 1996, an Order to Show (OSC) was issued against the applicant. On April 29, 1997, an immigration judge ordered the applicant deported from the United States. On May 29, 1997, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On February 5, 2002, the Board dismissed the applicant's appeal. On March 6, 2002, the applicant filed a motion to reconsider the Board's decision. On the same day, the applicant filed a Petition for Review with the Third Circuit Court of Appeals (Third Circuit). On November 24, 2003, the Board denied the applicant's motion to reconsider. On the same day, a Warrant of Removal/Deportation (Form I-205) was issued. On December 2, 2004, the Third Circuit denied the applicant's Petition for Review.

On October 6, 2006, the applicant's second United States citizen husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application for Temporary Protected Status (Form I-821) (TPS). On October 24, 2006, the applicant was removed from the United States. On April 13, 2007, the applicant's Form I-821 was denied. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I); 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II); and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(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 United States citizen spouse and children.

The Acting District Director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to procure an immigration benefit. Additionally, the Acting District Director determined that the applicant is barred from having a petition approved on her behalf because of her fraudulent marriage, and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212)

accordingly. *Acting District Director's Decision*, dated September 21, 2007; *see also* section 204(c) of the Act.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states:

> Limitation on orphan petitions approved for a single petitioner; prohibition against approval in cases of marriages entered into in order to evade immigration laws; restriction on future entry of aliens involved with marriage fraud
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> Notwithstanding the provisions of subsection (b) no petition shall be approved if
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> (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General [Secretary, Department of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or
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> (2) the [Secretary, Department of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.
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> . . . .
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> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(a)(9). Aliens previously removed.-

> (A) Certain alien previously removed.-
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> . . . .
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> (ii) Other aliens.- Any alien not described in clause (i) who-
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> (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 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 of an aliens 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, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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 AAO notes that the applicant committed marriage fraud with her first husband. The applicant is subject to the provisions of section 204(c) of the Act, and therefore, she is statutorily ineligible for a waiver of inadmissibility or the approval of any petition. The AAO finds that 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 Form I-212 was properly denied by the Acting District Director.

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 appeal is dismissed.