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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE:

Office: ANCHORAGE, AK

Date: **AUG 28 2009**

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Anchorage, Alaska, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was expeditiously removed from the United States on May 20, 1998 and subsequently reentered the United States without being admitted on or about June 1, 1998. As such, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). The applicant 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 in the United States.

The field office director determined that the applicant had failed to establish eligibility and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Field Office Director's Decision*, dated September 26, 2007.

On appeal, counsel states that the field office director erred as a matter of fact in concluding that the applicant's equities were outweighed by the negative factors in her case, and erred as a matter of law in concluding that there were grounds to deny due to the absence of a concurrently filed waiver application for other grounds of inadmissibility. *Form I-290B*, at 2, received October 29, 2007.

The entire record was reviewed and considered in arriving at a decision on the appeal.

The AAO finds that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act as found by the field office director. The AAO also finds that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed and reentering the United States without being admitted.

Section 212(a)(9)(C)(i) of the Act states, in pertinent part:

(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.

(ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States

if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, consent to reapply under section 212(a)(9)(C)(ii) of the Act can only be granted to one who has left the United States, is currently abroad and is seeking admission to the United States at least ten years after the date of his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record does not reflect that the applicant in the present matter has met these requirements. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act and the AAO finds no purpose would be served in considering the merits of her Form I-212 application under section 212(a)(9)(A)(iii) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.