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 Services

H4

[redacted]

FILE: [redacted] Office: TUCSON, AZ Date: DEC 03 2009

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: Self-represented

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tucson, Arizona, denied an 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 who, on December 30, 2004, married her naturalized U.S. citizen spouse in San Fernando, California. On May 3, 2005, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On November 17, 2005, the Form I-130 was approved.

On January 2, 2007, the applicant appeared at the Nogales, Arizona port of entry. The applicant presented her Mexican passport containing a U.S. nonimmigrant visa. Immigration officers suspected that the applicant had overstayed her nonimmigrant status in the past and had immigrant intent. The applicant was placed into secondary inspection. Receipts from various U.S. stores were located in the applicant's belongings, reflecting that she had been in the United States on August 21, 2006 and September 29, 2006. The applicant then admitted to living in the United States from May 2006 until October 2006 without seeking admission. The applicant stated that she had resided with her "boyfriend" during that time. The applicant admitted that she knew that it was illegal to enter the United States without obtaining proper permission and she was in violation of her nonimmigrant status when she traveled to and resided in Van Nuys, California without admission. The applicant stated that she wished to enter the United States in order to go shopping in Tucson, Arizona. The applicant's U.S. nonimmigrant visa was revoked pursuant to section 222(g) of the Immigration and Nationality Act (the Act). The applicant was found to be inadmissible pursuant to section 212(a)(7)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(7)(B)(i)(II), for being a nonimmigrant without valid documentation. On January 2, 2007, 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) under her maiden name.

On July 16, 2007, the applicant filed the Form I-212, indicating that she resided in Mexico. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). 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 lawful permanent resident daughter.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated June 17, 2009.

On appeal, the applicant contends that the field office director abused his discretion in denying her Form I-212 and finding the only favorable factor in her case to be her marriage to a U.S. citizen. The applicant contends that she has submitted proof that she was present in Mexico during the period of time she was allegedly present in the United States. *See Form I-290B,* dated July 14, 2009. In support of her contentions, the applicant submits the referenced Form I-290B, a statement, recommendation letters and copies of documentation purporting to establish the applicant's residence in Mexico in 2006. 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 of Homeland Security] has consented to the alien's reapplying for admission.

. . . .

(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, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

> The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—
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> (I) the alien's battering or subjection to extreme cruelty; and
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> (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The applicant asserts that she has remained outside the United States and lived in Mexico since her removal in 2007.[1]

On appeal, the applicant contends that she signed the Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act (Form I-867A) and other removal documentation without being aware of what she was signing. She contends that she learned that the documents alleged that she had remained in the United States for a period of six months when she was only present in the United States for a period of ten days in June 2006. The applicant contends that she has included evidence to establish her residence in Mexico during the time she was supposedly in the United States.

In support of her statement that she was in Mexico during the period of time in question, the applicant submits: (1) a High School Registry Application for her daughter; (2) Permission slips for her daughter; (3) School Evaluation for her daughter; (4) Report Card for her daughter; (5) Graduation Certificate for her daughter; (6) Receipts and Credit Card bills; and (7) a Property Tax Receipt. The AAO notes that the School documents in regard to the applicant's daughter purport to reflect that the applicant signed these documents in Mexico on August 27, 2006; October 16, 2006; September 18, 2006; October and December 2005 and February, April and July 2006. The AAO finds that these documents are insufficient to establish that the applicant was physically in Mexico at the time in question, since the documentation could be signed in the United States and forwarded to Mexico. The credit card statements submitted by the applicant purport to reflect that the applicant made credit card charges in Mexico on May 17, 2006, May 24, 2006, June 5, 2006 and August 10, 2006. The AAO notes that the credit card statements are not accompanied by an English translation. Moreover, while the credit card indicates that the card was issued under the applicant's maiden name, these charges may have been made by another member of the household permitted to use the account. The AAO finds that these documents are insufficient to establish that the applicant was physically in Mexico at the time in question, since the credit cards in question could be charged by another individual. The AAO notes that the property tax receipt submitted by the applicant bears her daughter's name as the registered land owner, is dated April 1, 2009, and has no bearing on the time in question.

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[1] The AAO notes that, if it is later confirmed that the applicant illegally reentered the United States *at any time* after her 2007 removal, she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until she has remained outside the United States for a period of ten years. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006) and *Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007).

While one credit card receipt reflects that the applicant paid for merchandise in Mexico on May 27, 2006, this information does not conflict with the applicant's statement that she resided in the United States from May 2006 until October 2006. The AAO notes that the applicant has failed to provide evidence such as registration cards issued in Mexico during the time in question, such as voter registration, drivers license, cedula or passport and/or entry and exit stamps in her passport reflecting her claimed exits and entries. Moreover, the receipts located in the applicant's belongings at the port of entry clearly reflect that the applicant was physically in the United States on August 21, 2006 and September 29, 2006, which does not coincide with the applicant's claim that she was only in the United States for ten days in June 2006.

The record reflects that, while the applicant was admitted to the United States as a nonimmigrant valid from July 18, 2004 until January 17, 2005, she departed the United States on August 6, 2004 and did not seek legal admission at the time of her reentry into the United States in order to attend her marriage in San Fernando, California on December 30, 2004. While the applicant was admitted as a nonimmigrant from March 19, 2005 until September 18, 2005, she departed the United States on April 15, 2005 and immediately reentered the United States on April 16, 2005. While the applicant was admitted on April 16, 2005 until October 15, 2005, the record does not contain evidence that the applicant departed the United States prior to the expiration of her nonimmigrant status. The record also reflects that the applicant knew that she had illegally reentered the United States despite her claims that she was not residing in the United States, was only visiting family and did not have immigrant intent. Moreover, the record reflects that the applicant, in making a sworn statement to immigration officers at the port of entry, described her husband as her "boyfriend," thereby misleading immigration officers into believing that the applicant did not have any lawful permanent resident or U.S. citizen relatives. As such, the record reflects that the applicant was effectively residing in the United States despite purporting to be a nonimmigrant and also had immigrant intent at the time she sought admission to the United States on January 2, 2007.

The AAO finds 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 willful misrepresentation of a material fact by obtaining admission and attempting to enter the United States as a nonimmigrant while she had immigrant intent.[2] To seek a waiver of this ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

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[2] Discounting all of the applicant's prior entries into the United States while she had immigrant intent, the statements made by the applicant at the port of entry in 2007 and concealment of her true relationship to her U.S. citizen husband clearly reflect that the applicant made a willful misrepresentation of a material fact in attempting to enter the United States on January 2, 2007.