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U.S. Citizenship  
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FILE:

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Date:

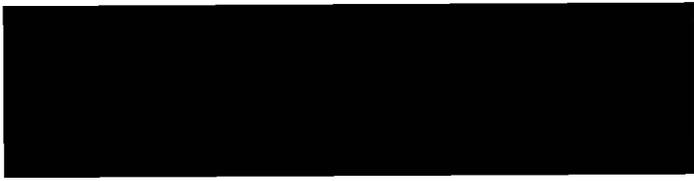
**FEB 02 2009**

IN RE:



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

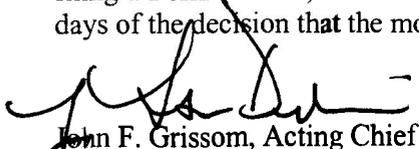
ON BEHALF OF APPLICANT:



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.

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 District Director, Baltimore, Maryland, 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 applicant is a native and citizen of Mexico who, on March 18, 1992, was placed into immigration proceedings after she had entered the United States without inspection. On May 12, 1992, the immigration judge granted the applicant voluntary departure until August 12, 1993. On April 26, 1993, the applicant married her lawful permanent resident spouse, [REDACTED]. The applicant filed a request for extension of voluntary departure, which was denied. The applicant failed to surrender for removal or depart from the United States, thereby changing the grant of voluntary departure to a final order of removal. On August 8, 1994, a warrant for the applicant's removal was issued. On March 31, 1997, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on July 8, 1997. On December 4, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On the same day, the applicant filed the Form I-212. In an affidavit attached to the Form I-212, the applicant testified that she had departed the United States on September 27, 1997 and returned to Mexico. She also testified that she had reentered the United States without a lawful admission or parole and without permission to reapply for admission, in February 1998. Further, copies of the applicant's Mexican passport reflect that she was present in Mexico at the time of its renewal on December 23, 1997. On June 28, 2005, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Baltimore, Maryland District Office. The applicant confirmed her departure from the United States while an order of removal was outstanding and her subsequent reentry into the United States. On June 29, 2005, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). A Departure Verification Form (Form G-146) establishes that the applicant departed the United States and returned to Mexico on July 15, 2005. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 return to the United States and reside with her lawful permanent resident spouse and four U.S. citizen children.

The district director determined that the applicant had failed to establish that the favorable factors outweighed the unfavorable factors in her case and denied the Form I-212 accordingly. *See District Director's Decision*, dated January 6, 2006.

On appeal, counsel contends that the district director did not properly apply relevant case law to the applicant's case. Counsel contends that the applicant warrants a favorable exercise of discretion. *See Counsel's Brief*, dated January 25, 2006. In support of his contentions, counsel only submits the referenced brief. 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 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 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. [Emphasis added]

....

(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 has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

- (1) the alien's having been battered or subjected to extreme cruelty;
    - and

- (2) the alien's--
  - (A) removal;
  - (B) departure from the United States;
  - (C) reentry or reentries into the United States; or
  - (D) attempted reentry into the United States.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. As noted previously, on September 27, 1997, the applicant departed the United States while an order of removal was outstanding. The applicant reentered the United States in February 1998 without a lawful admission or parole and without permission to reapply for admission. The AAO finds that the applicant is inadmissible pursuant to both section 212(a)(9)(A)(ii) of the Act and section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having reentered the United States illegally after having been removed.

The AAO notes that an exception to the section 212(a)(9)(C)(i) ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See also* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless he or she has *remained outside* the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States since that departure, *and* that USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on July 15, 2005, less than ten years ago. She is currently statutorily ineligible to apply for permission to reapply for admission. Additionally, the AAO finds that, in light of the applicant's repeated violations of the immigration laws and her inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having accrued more than one year of unlawful presence and seeking admission within ten years of her last departure, she would not warrant a favorable exercise of discretion.

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. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed as a matter of discretion.

**ORDER:** The appeal is dismissed.