

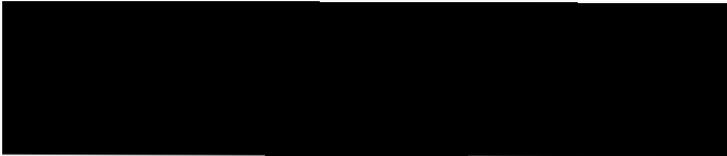
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FILE:



Office: VERMONT SERVICE CENTER
(RELATES)

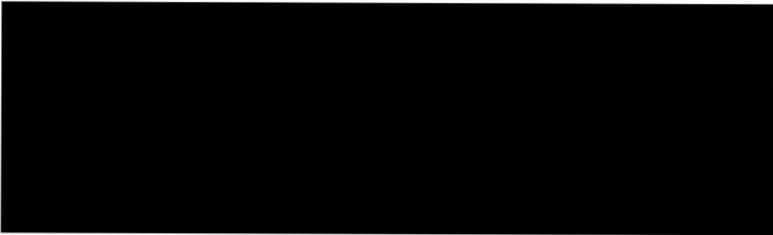
Date: FEB 18 2009

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)

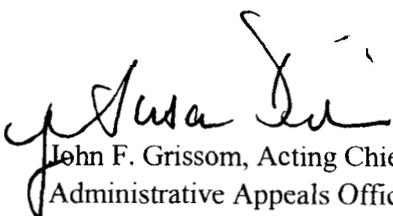
ON BEHALF OF APPLICANT:



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 Director, Vermont Service Center, 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 Brazil who, on September 11, 1999, appeared at the Chicago O'Hare International Airport. The applicant presented a Brazilian passport and a U.S. nonimmigrant visa bearing the name "[REDACTED]". The applicant's documents appeared to have been altered and she was placed into secondary inspections. During sworn testimony, the applicant failed to admit to her married name or status or that she had previously applied for a U.S. nonimmigrant visa under her married name and had been denied twice. The AAO notes that the applicant had been admitted to the United States on September 1, 1987 under her married name as a nonimmigrant and had remained in the United States until June 1997. The applicant, in a statement accompanying the Form I-212, admitted that, in December 1999, she was attempting to return to the United States to rejoin her husband and child in the United States. The applicant's passport was found to be fraudulent and that her visa had been chemically wiped and altered. Despite this evidence, the applicant continues to decline to admit that she was aware of the fraud. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and for being an immigrant without valid documentation. On September 12, 1999, 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). On October 2, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), as a dependent of her husband's approved Petition for Alien Worker (Form I-140). On August 9, 2005, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Hartford, Connecticut Field Office. The applicant testified that she had reentered the United States without a lawful admission or parole and without permission to reapply for admission, on September 19, 1999. On September 15, 2005, the applicant's Form I-485 was denied. On March 21, 2006, the applicant's husband, [REDACTED] became a lawful permanent resident. On August 7, 2006, the applicant filed the Form I-212. The applicant is inadmissible under 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 remain in the United States and reside with her lawful permanent resident spouse and U.S. citizen child.

The director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally entering the United States after having been removed. The director determined that it had not been ten years since the applicant's last departure and no purpose would be served in adjudicating the Form I-212. The director denied the Form I-212 accordingly. *See Director's Decision*, dated July 23, 2007.

On appeal, counsel contends that the director erred in denying the applicant's Form I-212. Counsel contends that the applicant cannot be inadmissible pursuant to both section 212(a)(9)(A)(i) and 212(a)(9)(C)(i) of the Act. *See Counsel's Brief*, dated April 6, 2007. In support of her contentions, counsel only submits the referenced brief and copies of documentation previously provided. 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 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 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.

On appeal, counsel contends that the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, because it has been more than five years since her removal. The AAO, however, finds counsel's contentions to be unpersuasive. An applicant must remain outside the United States for the required period of inadmissibility, unless he or she obtains permission to reapply for admission. The applicant failed to remain *outside* the United States for the required period. Here, the applicant reentered the United States immediately after her removal and, therefore, has failed to spend the requisite period of time outside the United States that would render permission to reapply for admission moot. The AAO finds that the applicant is still inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, and, therefore, must receive permission to reapply for admission to the United States.

On appeal, counsel contends that the applicant cannot be inadmissible under both section 212(a)(9)(A) and 212(a)(9)(C) of the Act. Counsel contends that inadmissibility under section 212(a)(9)(A) of the Act trumps inadmissibility under section 212(a)(9)(C) of the Act. Counsel further contends that section 212(a)(9)(C) of the Act conflicts with section 235(b)(1) of the Act. The AAO finds counsel's contentions to be unpersuasive. Inadmissibility sections are not exclusive of each other and sections 212(a)(9)(A) and 212(a)(9)(C) of the Act do not conflict with each other. An applicant may only be inadmissible under section 212(a)(9)(A) of the Act if he or she has been removed from the United States and the required period of time has not yet passed. An applicant becomes inadmissible under both section 212(a)(9)(A) and 212(a)(9)(C) of the Act when he or she illegally reenters or attempts to illegally reenter the United States after having been removed.

Finally, on appeal, counsel contends that pursuant to the Ninth Circuit Court of Appeals decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), the applicant's inadmissibility should be waived because the applicant filed for adjustment of status pursuant to section 245(i) of the Immigration and Nationality Act (the Act). Unfortunately this case does not arise in the Ninth Circuit and *Perez-Gonzalez* is not controlling. Furthermore, the holding of *Perez-Gonzalez* was

recently overturned in the Ninth Circuit in deference to the Board of Immigration Appeals' *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).

As noted previously, on September 12, 1999, the applicant was removed from the United States. On September 19, 1999, the applicant reentered the United States 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)(i) 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, Supra.* 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 December 12, 1999, less than ten years ago, and she has not remained outside the United States since that departure. 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)(6)(C)(i) of the Act, 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.