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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
Services

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JUL 06 2009

FILE:

Office: VERMONT SERVICE CENTER

Date:

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 the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen is denied. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Peru who, on June 18, 1992, appeared at the New Orleans International Airport. The applicant presented an altered Peruvian passport bearing the name [REDACTED] [REDACTED]” On June 19, 1992, the applicant was placed into immigration proceedings. On October 6, 1992, the applicant pled guilty to and was convicted of willful use of an altered passport in violation of 18 U.S.C. § 1543. The applicant was sentenced to three years of probation. A condition of the applicant’s sentencing was that she could not enter the United States without prior permission by the Attorney General. On October 7, 1992, the immigration judge ordered the applicant removed. On October 9, 1992, the applicant was removed from the United States and returned to Peru. On December 19, 1997, the applicant’s mother, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, as the unmarried daughter of a lawful permanent resident, which was approved on March 26, 1998. On October 5, 2001, [REDACTED] became a naturalized U.S. citizen. On January 28, 2002, the applicant filed a Form I-212. On October 15, 2003, the Form I-212 was denied. On November 17, 2003, the applicant filed an appeal of the denial of the Form I-212 with this office. On September 23, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On January 30, 2006, the applicant withdrew the appeal. On February 21, 2006, the applicant filed a second Form I-212. In her affidavit, the applicant testified that she reentered the United States without inspection in 1994. 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 reside in the United States with her U.S. citizen mother, three U.S. citizen children, and three U.S. citizen siblings.

The director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Director’s Decision* dated May 15, 2007.

On December 22, 2008, the AAO dismissed the applicant’s appeal because she did not warrant a favorable exercise of discretion. *Decision of AAO*, dated December 22, 2008.

In her motion to reopen, counsel contends that the applicant has never been charged with or convicted of violating 18 U.S.C. § 1543. *See Form I-290B*, dated January 19, 2009. In support of her contentions, counsel submits the referenced Form I-290B, a Federal Bureau of Investigation (FBI) fingerprint chart, and copies of federal taxes. 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.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) Requirements for motion to reopen.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) Requirements for motion to reconsider.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In support of her motion to reopen, counsel submits an FBI fingerprint chart, dated January 14, 2009, with a "no arrest record" stamp. Counsel contends that the AAO erred in stating that the applicant had pled guilty to and was convicted of willful use of an altered passport. Counsel contends that the FBI background search submitted on appeal establishes that there are no FBI criminal justice records establishing that the applicant has ever been arrested. Counsel contends that the AAO confused the applicant within another person. Counsel requests that the AAO verify the record of proceeding to determine whether a federal court record exists for the applicant, A-Number [REDACTED]. Counsel requests that the AAO reverse its decision after considering the attached FBI background search results and tax returns.

The AAO finds that it correctly found the applicant to have been convicted of willful use of an altered passport. While the FBI background search submitted on appeal reveals no prior arrests for the applicant, this clearly conflicts with the applicant's admission of prior removal from the United States.¹ Documentation in the record establishes that the applicant is the same person who was removed under [REDACTED]. A criminal complaint and Judgment and Probation/Commitment Order establish that the person removed under [REDACTED] was charged with and convicted of use of an altered passport. These documents reflect that, while the applicant did not originally admit to her true identity, she later admitted that her true name was "[REDACTED]," her date of birth was May 10, 1968, and her place of birth was Pueblo Libre, Lima, Peru. The record clearly reflects that the applicant's full name, date of birth and place of birth correspond with the records associated with the conviction for willful use of an altered passport.² Should the applicant and counsel wish to obtain copies of the documentation relating to the applicant's conviction submission of a Freedom of Information Request (Form G-639) is required.

In support of her motion to reopen, counsel submits copies of federal tax returns reflecting that the applicant paid federal tax in 2007 and 2006. The AAO finds these tax records to be insufficient new evidence to warrant a motion to reopen. Moreover, counsel and the applicant had an opportunity to submit such documentation on appeal, at the time they claimed the applicant's payment of federal taxes to be a positive factor. Finally, the AAO notes that the filing of the federal taxes combined with the other favorable and unfavorable factors, extensively discussed in this office's prior decision, would not warrant a favorable exercise of discretion.

¹ The AAO notes that it is possible that the fingerprint matches were not submitted to and entered into the FBI's system.

² While the AAO is not an expert on fingerprints, the fingerprints attached to the removal documents match the fingerprints on the submitted FBI search record.

After a careful review of the record, it is concluded that the applicant has failed to establish that the evidence submitted in the motion to reopen meets the requirements of a motion to reopen. Accordingly, the motion to reopen is denied and the order dismissing the appeal is affirmed.

ORDER: The motion to reopen is denied. The order dismissing the appeal will be affirmed.