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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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H4

FILE:

Office: HOUSTON, TX

Date:

JUL 16 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: 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).

hn F. Grisso
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Houston, Texas, 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 Form I-290B indicates that the applicant is represented and that counsel is filing the appeal; however the Form I-290B is clearly completed by the applicant's spouse and is not executed by counsel. All representations will be considered but the decision will be furnished only to the applicant.

The applicant is a native and citizen of Mexico who, on December 27, 2003, appeared at the Del Rio, Texas port of entry. The applicant presented a DSP-150 nonresident border crossing card bearing the name "[REDACTED]" Immigration officers suspected that the applicant was not the true owner of the document. The applicant was placed into secondary inspections. The applicant admitted that she was not the true owner of the document and that she had found it. She stated that she was aware that it was illegal to present the document. She stated that she had been previously arrested by immigration officers in April 2003 and had been permitted to return to Mexico. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud. On December 31, 2003, the applicant was convicted of illegally entering the United States by false and misleading representations in violation of 8 U.S.C. § 1325(a)(3). The applicant was sentenced to ninety days in jail. On March 25, 2004, 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 August 8, 2006, the applicant filed the Form I-212, indicating that she resided in the United States. The applicant is inadmissible 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). 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 now naturalized U.S. citizen spouse.

On October 21, 2008, the district director determined that the applicant was required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) in conjunction with a Form I-212 at the U.S. Consulate abroad and denied the Form I-212 accordingly. *See District Director's Decision*, dated October 21, 2008.

On appeal, the applicant's spouse contends that his wife attempted to enter the United States in December 2003 due to a strong depression.¹ The applicant's spouse contends that the applicant has resided alone in Mexico for the past eight years. *See Letter Accompanying Form I-290B*. In support of his contentions, the applicant's spouse only submits the referenced letter. 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.-

¹ The AAO notes that the record reflects that the applicant spouse was present at the time the applicant attempted to enter the United States.

- (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.

The applicant's spouse asserts that the applicant has remained outside the United States and lived in Mexico for the past eight years.²

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to enter the United States by fraud. 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 a 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.

² The AAO notes that there are inconsistencies in the record as to whether the applicant resides in the United States or in Mexico. The Form I-212 indicates that the applicant resides in the United States. The AAO finds that the applicant's spouse's statement is insufficient to establish that the applicant has remained outside the United States. The applicant is required to show proof that she has resided outside the United States since her 2004 removal at the time of her immigrant visa interview. If the documentation satisfies the U.S. Consulate that she has remained outside the United States for the full five-year period, then the applicant will no longer be required to apply for permission to reapply for admission and may seek a separate waiver of grounds of inadmissibility, rather than filing it in conjunction with a new Form I-212 with the U.S. Consulate. If it is later confirmed that the applicant illegally reentered the United States *at any time* after her 2004 departure, 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).