

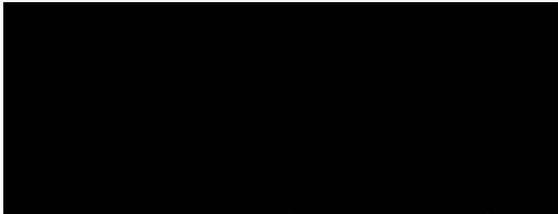
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 11 2009

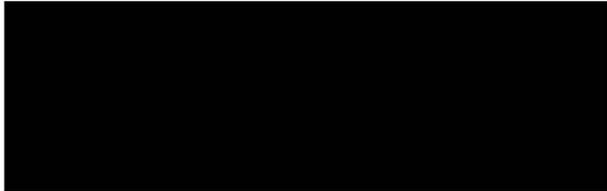
IN RE:



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)

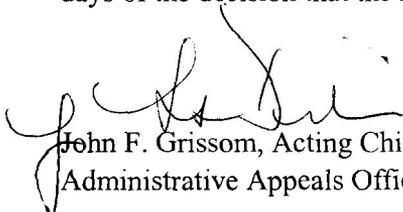
ON BEHALF OF APPLICANT:



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


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 Mexico who, on May 16, 2003, married her U.S. citizen spouse, [REDACTED], in Mexico. On June 30, 2003, the applicant appeared at the San Ysidro, California port of entry. The applicant presented a DSP-150 border crossing card bearing the name "[REDACTED]" The applicant was placed into secondary inspections. The applicant admitted that she did not have valid documentation to enter the United States and provided immigration officers with her maiden name. 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 July 1, 2003, 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 the name [REDACTED].

On July 1, 2003, the applicant again appeared at the San Ysidro, California port of entry. The applicant presented a DSP-150 border crossing card bearing the name [REDACTED]. The applicant was placed into secondary inspections. The applicant admitted that she did not have valid documentation to enter the United States and provided immigration officers with her maiden name. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act, for attempting to enter the United States by fraud and for being an immigrant without valid documentation. On July 2, 2003, the applicant was again expeditiously removed from the United States pursuant to section 235(b)(1) of the Act under the name "[REDACTED]"

On November 18, 2003, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 23, 2004. On September 19, 2005, the applicant filed the Form I-212. 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), for a period of twenty years. 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.

The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The director determined that the applicant was ineligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years and denied the Form I-212 accordingly. *See Director's Decision*, dated April 20, 2006.

On appeal, counsel contends that the director erred in finding that the applicant had reentered the United States since her 2003 removal. *See Counsel's Brief*, dated May 15, 2006. In support of her contentions, counsel submits only 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 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. [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.

Counsel asserts that the applicant has remained outside the United States and lived in Mexico since she was removed on July 2, 2003.¹

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 on two occasions in 2003. To seek a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant must file an Application for Waiver of Ground of Inadmissibility (Form I-601).

¹ The AAO notes that the record contains conflicting information in regard to the applicant's whereabouts and whether she has illegally reentered the United States at any time after her 2003 removal. Counsel is correct in pointing out that the address listed for the applicant on the Form I-212 is counsel's business address. The AAO notes that it is inappropriate for counsel to list her address in this section of the Form I-212. While counsel asserts that the applicant was not in the United States at the time the Form I-212 was filed, statements in counsel's letter accompanying the Form I-212 indicate that the applicant was present in the United States: "[redacted] depends on his wife for emotional and economic support . . . presently, if [the applicant] is denied admission [redacted] will be separated from his wife . . . if he decides to remain in the United States he will have to cope with losing the companionship of his wife. In the alternative, if [redacted] moves to Mexico, he will have to leave behind his family in the United States." Furthermore, the applicant, on the Form I-212, stated that she had resided in the United States for a period of two years (which would be accounted for by a reentry in 2003 and her presence in the United States until the 2005 filing of the Form I-212) since the applicant gave sworn testimony during both removals that she had never been to the United States. See *Records of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated July 1, 2003 and July 2, 2003. The AAO notes that the applicant has failed to provide evidence to establish that she has remained outside the United States since her removal in 2003. If it is later confirmed that the applicant illegally reentered the United States at any time after her 2003 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).

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.