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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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FILE:

Office: SAN BERNANDINO, CA

Date:

APR 27 2010

RELATES)

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).

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Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California, 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) rejected a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen is granted. The appeal will be summarily dismissed.

The applicant is a native and citizen of Mexico who, on July 31, 1998, appeared at the San Ysidro, California port of entry. The applicant presented a Mexican passport containing a U.S. nonimmigrant visa bearing the name "[REDACTED]." The applicant was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. 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 August 1, 1998, 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 20, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on her behalf by her lawful permanent resident spouse. The Form I-485 indicates that the applicant reentered the United States without inspection in September 1999. On January 8, 2009, the applicant filed the Form I-212, indicating that she continued to reside in the United States. On May 21, 2009, the Form I-485 was denied. 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 two U.S. citizen children.

The field office 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 field office director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated September 10, 2009.

On appeal, counsel contended that the applicant warranted a favorable exercise of discretion. *See Statement in Support of Application for Permission to Reapply for Admission*, dated July 16, 2009. In support of his contentions, counsel submitted the referenced statement, statements from the applicant and her spouse, letters of recommendation, copies of identity documents for the applicant's family members, financial and medical documentation and copies of awards and educational documentation.

On September 10, 2009, the AAO rejected the applicant's appeal as untimely filed. *Decision of AAO*, dated September 10, 2009.

In the motion to reopen, counsel contends that the appeal was timely filed. *See Form I-290B*, dated September 22, 2009. In support of his motion to reopen, counsel submits the referenced Form

I-290B and copies of a FedEx Airbill and tracking summary. The entire record was reviewed in rendering a decision in this case.

The regulation at 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 the motion to reopen, counsel contends that the appeal was timely filed. The AAO finds that the evidence submitted by counsel reflects that the appeal was timely received on June 19, 2009. As such, the AAO grants counsel's motion to reopen.

8 C.F.R. § 103.3(a)(1)(v) states in pertinent part:

Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The record reflects that, on June 19, 2009, counsel filed a Notice of Appeal (Form I-290B). On appeal, counsel simply asserts that the applicant warrants a favorable exercise of discretion and describes the various factors in the applicant's case in depth. The field office director found the

applicant *ineligible* to apply for permission to reapply for admission.¹ Counsel failed to identify either on the Form I-290B or in his statement any erroneous conclusion of law or statement of fact made by the field office director. Accordingly, the motion to reopen is granted and the appeal will be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The motion to reopen is granted. The appeal is dismissed.

¹ See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9th Cir. 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).