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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

[REDACTED]

H4

FILE: [REDACTED] Office: SAN FRANCISCO, CA

Date: **AUG 16 2010**

IN RE: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, 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 Taiwan, Republic of China (ROC), who, on November 3, 2007, appeared at the San Francisco International Airport. The applicant presented her ROC passport containing a U.S. nonimmigrant visa. Immigration officers suspected that the applicant had immigrant intent and she was placed into secondary inspection. The applicant was found to be in possession of documentation establishing her prior employment in the United States and confirming that she was expecting her personal belongings to be shipped to the United States in November 2007 to the address she shared with her husband. The applicant admitted that she had recently married a U.S. citizen. The applicant admitted that the purpose for her visit to the United States was to meet her husband and live in the United States. The applicant admitted that, during her stay in the United States from November 9, 2006 until February 9, 2007, she was employed without authorization. The applicant admitted that, during her stay in the United States from March 12, 2007 until August 14, 2007, she was again employed without authorization. The applicant admitted that she received remuneration for her employment in the United States. The applicant admitted that she maintained U.S. bank accounts and stated that her husband had filed immigration papers for her after they had married. The applicant admitted that she had arranged to have her personal belongings shipped to the United States during her last trip back to Taiwan. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documentation. On November 3, 2007, 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 June 8, 2008, the applicant's naturalized U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on September 2, 2008. On June 2, 2009, the applicant filed the Form I-212 indicating that she resided in Taiwan. The applicant is inadmissible pursuant to 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 reside in the United States with her naturalized U.S. citizen spouse.

On July 8, 2009, the field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated July 8, 2009.

On appeal, counsel contends that the field office director failed to consider all of the applicant's favorable factors, overemphasized insignificant unfavorable factors and incorrectly applied the law. *See Counsel's Brief*, dated September 1, 2009. In support of her contentions, counsel submits the referenced brief, a supplemental statement from the applicant and psychological documentation. 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 of an 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 of Homeland Security] 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.

(iii) Waiver

The [Secretary], in the [Secretary's] discretion, may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

- (1) the alien's battering or subjection to extreme cruelty; and
- (2) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The applicant claims that she has remained outside the United States since her November 3, 2007 removal.¹

While counsel and the applicant contend that the applicant did not engage in unauthorized employment in the United States during her admissions as a nonimmigrant, the record reflects that the applicant admitted that she received remuneration for her employment. The applicant, in her statement accompanying the Form I-212, stated that she merely helped her friend at her establishment during her first visit and was helping a bartender in order to practice her newly obtained mixology skills, but did not receive any remuneration. The applicant, in her supplemental statement on appeal, states that she now understands that when she thought she was helping her friend at the bar, working not for wages, but accepting tips, that she violated the immigration laws. She states that she would not have done it if she had understood at the time that she was violating the law. The Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act, dated November 3, 2007, reflects that the applicant admitted she was employed in the United States and received remuneration, specifically \$30 per day during her first trip and \$60-100 per table she served during her second trip. The applicant also admitted that she did not have a working visa or permit while she was employed during these trips. The AAO finds that the applicant was aware that she required a working visa or employment authorization in order to work in the United States during her trips.

While counsel and the applicant contend that the applicant did not intend to immigrate to the United States in November 2007, the record reflects that the applicant intended to reside in the United States and had shipped her personal belongings to the United States, despite any plans to return to Taiwan for a traditional wedding with her family. The applicant, in her statement accompanying the Form I-212, states that she only intended to visit her husband in the United States and make wedding plans. She states that she truly had no immigrant intent at the time. The applicant, in her

¹ The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after her 2007 departure, he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

supplemental statement on appeal, states that she did not have a return ticket to Taiwan because she was planning on her husband buying roundtrip tickets to Taiwan for the Chinese New Year. She states that the immigration officer forced her to open her email account, in which they found an email from [REDACTED] for a shipment from Taiwan to Oakland, California, which was really a shipment of auto parts for her husband, which she had arranged on his behalf. She states that the immigration officers wrongfully assumed that she had planned to move her belongings to the United States. The record reflects that correspondence with [REDACTED] was conducted by the applicant's husband, not the applicant. The record also reflects that the shipment was in regard to [REDACTED] personal effects LCL Kee to San Francisco (Oakland), CA" and the consignee was [REDACTED] with the applicant's husband the notifying party. The email further reflects that the contents of the package were described as personal effects by both the applicant's husband and the receiver for [REDACTED]. The Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act, dated November 3, 2007, reflects that the applicant admitted that her purpose in coming to the United States was to be with her husband and "live in the United States." The applicant also stated that her husband had already filed immigration papers for her to stay in the United States permanently after they were married. While the record reflects that the applicant's husband had not yet filed immigration papers on behalf of the applicant at the time she was interviewed, the AAO finds that, despite the applicant's planned trip to Taiwan for a traditional wedding, she had immigrant intent, had shipped her belongings to the United States and believed that immigrant papers had already been filed on her behalf, but knew that she was required to obtain an immigrant visa to enter the United States.

The AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter and gaining admission by fraud by presenting a nonimmigrant visa with immigrant intent on multiple occasions, but specifically on November 3, 2007. 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 an Application for Waiver of Grounds of Inadmissibility (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.