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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

PUBLIC COPY

H4

[Redacted]

FILE:

[Redacted]

Office: PORTLAND, OR

Date: **MAR 15 2010**

RELATES)

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:

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Portland, Oregon, 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 November 19, 1996, 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 did not have valid documentation to enter the United States. The applicant failed to provide her true identity. On the same day, the applicant was placed into immigration proceedings for attempting to enter the United States by fraud. On November 21, 1996, the immigration judge ordered the applicant removed from the United States. On November 21, 1996, the applicant was removed from the United States and returned to Mexico under the name [REDACTED].

On September 10, 1997, the applicant married her lawful permanent resident spouse in Portland, Oregon. On October 14, 1997, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on October 27, 1998. On October 2, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On the same day, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, indicating that she resided in the United States. The Form I-485 indicates that the applicant reentered the United States without inspection in November 1996. On September 7, 2006, the Form I-601 was denied. The applicant filed a motion to reopen with the Portland, Oregon field office. The motion to reopen was granted and, on June 9, 2009, the Form I-485 and Form I-601 were denied. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 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 June 9, 2009.

On appeal, counsel contends that the field office director erred in retroactively applying *Gonzales v. DHS (Gonzales II)*, when the applicant, in filing the Form I-212, relied upon the Ninth Circuit Court of Appeals (Ninth Circuit) decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). Counsel contends that it has been more than ten years since the applicant's last departure from the United States and that the applicant's Form I-212 is a continuing application and that the Form I-212 regulations provide for a *nunc pro tunc* approval to the date on which the applicant reembarked into the United States. Counsel contends that the field office director did not seriously consider country conditions as a hardship factor to the applicant's spouse in determining whether extreme hardship existed in the applicant's case. See *Counsel's Brief*, dated August 25, 2009. In support of his contentions, counsel submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In a separate proceeding, the field office director, Portland, Oregon found the applicant 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 the United States by fraud and ineligible for a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). See *Field Office Director's Decision on Form I-601*, June 9, 2009. The applicant failed to timely file an appeal of the denial of the Form I-601.¹

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

In that the field office director found the applicant to be ineligible for a waiver of inadmissibility under section 212(i) of the Act and the applicant failed to file a timely appeal, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly, the appeal of the field office director's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

¹ In order to seek an appeal of a denial of an application, an applicant must file a Form I-290B for each application/petition from which he or she seeks an appeal/motion to reopen or reconsider. As such, the applicant has only filed one timely appeal.