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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 DIEGO, CA

Date:

MAR 24 2010

RELATES)

IN RE:

APPLICATION:

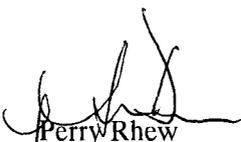
Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, San Diego, 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 Mexico who, on September 14, 1996, appeared at the San Ysidro, California port of entry. The applicant made an oral false claim to U.S. citizenship and presented a California identity card. The applicant was placed into secondary inspection. On September 14, 1996, the applicant was placed into immigration proceedings. On October 8, 1996, the immigration judge ordered the applicant removed from the United States. On the same day, the applicant was removed from the United States and returned to Mexico.

On November 25, 2005, 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. On the same day, the applicant filed the Form I-212. During an interview in connection with the Form I-485, the applicant admitted that, in February 1997, she had reentered the United States without inspection. The applicant denied that she had ever committed fraud in order to enter the United States. On February 24, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On July 13, 2009, the Form I-485 and Form I-601 were denied. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 lawful permanent resident children.

The district director found the applicant 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 district 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 district director denied the Form I-212 accordingly. *See District Director's Decision*, dated July 13, 2009.

On appeal, counsel contends that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(9)(C) of the Act. *See Counsel's Brief*, dated July 3, 2009. In support of her contentions, counsel submits the referenced brief and copies of notices approving the applicant's Form I-212 and Form I-485 in June 2006.¹ 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.

¹ The AAO notes that the applicant required approval of a Form I-601 to be eligible for adjustment of status and there is no evidence to indicate that the Form I-601 was approved. The AAO therefore finds that the withdrawal of these approvals was proper and appropriate.

....

- (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 district director, San Diego, California found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and ineligible for a waiver pursuant to section 212(i) of the Act. See *District Director's Decision on Form I-601*, July 13, 2009. The applicant has failed to file a timely appeal of the denial of the Form I-601.

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 district director has found the applicant to be ineligible for a waiver of inadmissibility under section 212(i) of the Act and the applicant has 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 district director's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.