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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: FRESNO, CA

Date: **NOV 22 2010**

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)

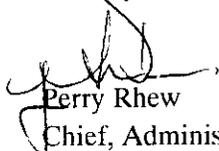
ON BEHALF OF APPLICANT:

INSTRUCTIONS:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Fresno, 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 December 29, 1996, appeared at the Calexico, California port of entry. The applicant presented an I-586 border crossing card 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 failed to admit her true identity to immigration officers. On December 29, 1996, the applicant was placed into immigration proceedings under the name "[REDACTED]." On January 2, 1997, 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 October 14, 2007, 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 January 1997. On the same day, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212. On August 7, 2009, the Form I-485 and Form I-601 were denied. In response to a request for further evidence the applicant indicated that she has not departed the United States since January 1997. The applicant is inadmissible under section 212(a)(9)(A)(ii) of 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 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 August 7, 2009.

On appeal, counsel contends that it would be impermissibly retroactive to apply *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007), to the applicant's case when she relied on the Ninth Circuit Court of Appeals (Ninth Circuit) decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004).<sup>1</sup> See *Form I-290B*, dated August 14, 2009. In support of his contentions, counsel submits only the referenced Form I-290B. The entire record was reviewed in rendering a decision in this case.

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

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<sup>1</sup> Counsel's contention is unpersuasive. In 2007, the Ninth Circuit Court of Appeals (Ninth Circuit) found that it should defer to the Board of Immigration Appeals' (BIA) decision in *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). See *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007). Furthermore, retroactivity arguments before the Ninth Circuit in regard to *Gonzales II* mirror retroactivity arguments already dismissed by the Ninth Circuit in *Morales-Izquierdo v. Department of Homeland Security*, 600 F.3d 1076 (9<sup>th</sup> Cir. 2010).

- (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 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 Field Office Director's Decision on Form I-601*, August 7, 2009. The applicant failed to timely file an appeal of or motion to reopen/reconsider 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 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 or motion to reopen/reconsider, 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.