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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 DIEGO, CA

Date: SEP 08 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: Self-represented

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 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 January 19, 1999, appeared at the San Ysidro, California port of entry. The applicant presented a photo-substituted Mexican passport containing a border crossing card 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 admitted that she had previously resided in San Diego. The applicant failed to admit her true identity to immigration officers. 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 January 20, 1999, 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) under the name "[REDACTED]."

On January 23, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), requesting reinstatement of a Petition for Alien Relative (Form I-130) filed on her behalf by her lawful permanent resident spouse.¹ The Form I-485 indicates that the applicant entered the United States without inspection on August 1, 1990. In response to a request for further evidence the applicant admitted that she reentered the United States without inspection on January 25, 1999 and October 31, 2001. On February 2, 2007, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, indicating that she continued to reside in the United States. On May 14, 2007, the request to reinstate the Form I-130 was denied. On June 8, 2007, the Form I-485 was denied. The applicant filed a motion to reconsider denial of the reinstatement of the Form I-130. On October 11, 2007, the motion to reconsider was denied. On March 20, 2008, the Form I-601 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) 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 child and two U.S. citizen children.

The district director determined that the Form I-601 had been denied and no purpose would be served by adjudicating the Form I-212. The district director denied the Form I-212 accordingly. *See District Director's Decision* dated November 2, 2009.

On appeal, the applicant contends that she is eligible for relief via Form I-212. *See Form I-290B*, dated November 25, 2009. In support of her contentions, the applicant submits only the referenced Form I-290B. On the Form I-290B, the applicant indicates that she will forward additional evidence and/or a brief within thirty days. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the San Diego, California district office or any other federal office. The record does not contain the

¹ The AAO notes that the Form I-130 had been denied on May 6, 1996 because the marriage was invalid due to failure to terminate a prior marriage. On May 7, 2001, the applicant remarried her lawful permanent resident spouse after termination of the prior marriage was established; however, at the time of filing for reinstatement and the filing of the Form I-485, the applicant's spouse had passed away.

brief and/or evidence that the applicant indicated would be submitted to the AAO. Even if the applicant were to submit evidence that a brief was filed with an office other than the AAO, the AAO would not consider the brief on appeal because counsel failed to follow the regulations or the instructions for the proper filing location. Accordingly the record is complete.

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 district 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. The applicant failed to timely file an appeal of or motion to reopen/reconsider the denial of the Form I-601.

Matter of Martínez-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 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 district director's denial of the Form I-212 will be dismissed as a matter of discretion.

Beyond the decision of the district director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(C)(i)(II) of the Act and does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Therefore, the applicant is statutorily ineligible to apply for permission to reapply for admission into the United States. The AAO also finds that the applicant is inadmissible under the provisions of section 212(a)(6)(C)(i) of the Act and the record reflects that she does not have a qualifying family member in order to qualify for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i). A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident *spouse or parent* of the applicant. A section 212(i) waiver may not be based upon extreme hardship to the applicant or his or her child(ren). As such, the applicant's U.S. citizen children are not qualifying relatives upon which she can base a waiver application under section 212(i) of the Act and the applicant's lawful permanent resident spouse is deceased. Therefore, the applicant is mandatorily inadmissible to the United States and no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States.²

ORDER: The appeal is dismissed.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).