

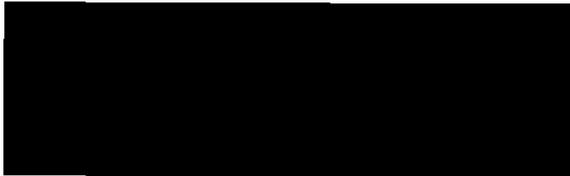
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: DEC 29 2011

OFFICE: EL PASO, TX

FILE: 

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:

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 \$630. 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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who entered the U.S. illegally in October 1988, and was removed from the U.S. on August 17, 2003. The applicant attempted to enter the U.S. without admission on August 21, 2003. She was apprehended and removed pursuant to a reinstated removal order on August 21, 2003. The applicant reentered the U.S. without admission on or after August 21, 2003. On April 28, 2009, her removal order was reinstated and she was removed from the U.S. The applicant has remained outside of the U.S. since April 28, 2009. The applicant was found to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(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 U.S. citizen husband and children.

In a decision dated December 8, 2010, the director determined the applicant was statutorily barred from Form I-212 eligibility because she failed to establish she had been outside of the U.S. for at least ten years since her last departure from the U.S. The Form I-212 was denied accordingly.

The applicant asserts on appeal that she regrets her immigration violations and that she and her U.S. citizen family are experiencing emotional and financial hardship due to her inadmissibility. To support her assertions the applicant submits letters from herself, her husband and her children, and from teachers and administrators at her children's school. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(C) of the Act provides in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

...

(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.

In the present matter the applicant was removed from the United States on August 17, 2003. She was removed a second time and her removal order was reinstated on August 21, 2003, after she attempted to illegally return to the U.S. The applicant illegally reentered the U.S. without admission on or after August 21, 2003. She remained in the U.S. and her immigration violations were discovered on April 17, 2009, upon adjudication of her pending Form I-485, adjustment of status application. The applicant's 2003 removal order was subsequently reinstated and the applicant was removed from the U.S. on April 28, 2009.

Because the applicant was ordered removed and she reentered the United States without being admitted, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission (Form I-212) unless the alien has been outside of the United States for more than ten years since the date of his or her last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility bars under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States for at least ten years *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred less than ten years ago, on April 28, 2009. Because the applicant has not remained outside of the U.S. for ten years since her last departure, she is currently statutorily ineligible to apply for permission to reapply for admission (Form I-212). The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.