identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

#4

[redacted]

FILE: [redacted] Office: SANTA ANA, CA Date: FEB 02 2011

IN RE: [redacted]

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

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Santa Ana, 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 February 7, 1999, was apprehended by immigration officers and was returned to Mexico.

On February 12, 2009, the applicant filed the Form I-212, indicating that she had resided in the United States for the past 15 years. On February 13, 2009, the applicant's lawful permanent resident spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. In response to a request for further evidence and in a letter accompanying the appeal, the applicant admitted that, after residing in the United States she returned to Mexico on or after January 22, 1999. She admitted that, on February 7, 1999, she attempted to enter the United States by presenting her Mexican passport containing a fraudulent U.S. nonimmigrant visa.[1] The applicant admitted that she was returned to Mexico and that she subsequently reentered the United States without inspection. The applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having illegally reentered the United States after accruing more than one year of unlawful presence in the United States. She seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to reside in the United States with her lawful permanent resident spouse, two U.S. citizen children and two lawful permanent resident 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 from the United States.[2] 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 13, 2009.

On appeal, the applicant contends that she should be granted admission for the benefit of her children, especially since one of her children requires special services. *See Applicant's Letter,* dated September 2, 2009. In support of her contentions, the applicant submits the referenced letter, identity-, immigration- and school- documentation. The entire record was reviewed in rendering a decision in this case.

---

[1] The applicant is 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 in 1999. In order to obtain a waiver of this ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601); however, the applicant must concurrently file the Form I-601 with the Form I-212 at the U.S. Consulate abroad after having remained outside the United States for a period of ten years.

[2] The field office director incorrectly found the applicant inadmissible for illegally reentering the United States after having been removed since the current record does not contain any evidence that the applicant was removed from the United States; however, based on the applicant's admissions, the applicant is inadmissible under section 212(a)(9)(C) of the Act for illegally reentering the United States after accruing more than one year of unlawful presence in the United States.

Section 212(a)(9) of the Act states, in pertinent part:

> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
>
> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
>
> (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 of Homeland Security has consented to the alien's reapplying for admission.
>
> (iii) Waiver
>
> The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—
>
> (I) the alien's battering or subjection to extreme cruelty; and
>
> (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.[3]

The record reflects that the applicant accrued unlawful presence in the United States from April 1, 1997, the date on which the unlawful presence provisions were enacted, until January 22, 1999, or a date thereafter, the date on which she departed the United States and returned to Mexico. The applicant subsequently reentered the United States without inspection. Accordingly, the applicant has illegally reentered the United States after having accrued more than one year of the unlawful presence in the United States.

As noted by the director, an alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless he or she has *remained outside* the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of*

[3] There are no indications in the record that the applicant is a VAWA self-petitioner.

Torres-Garcia, Supra.; *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility 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 since that departure, *and* U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. While the applicant's last departure from the United States occurred on or after January 22, 1999, but before February 7, 1999, more than ten years ago, she has not remained outside the United States since that departure and she is currently in the United States.[4] The applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. The applicant in the instant case does not qualify for the exception or waiver under section 212(a)(9)(C)(ii) and (iii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

[4] The applicant will be required to submit evidence establishing that she is currently outside the United States and has remained outside the United States for a period of ten years when she becomes eligible to apply for permission to reapply for admission.