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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

H4

FILE:

Office: HOUSTON, TX

Date:

FEB 08 2011

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, 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, Houston, Texas, 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 of Honduras and a citizen of Honduras and Mexico who, on October 27, 2007, appeared at Houston International Airport. The applicant presented her Mexican passport and her U.S. B-1/B-2 nonimmigrant border crossing card. Immigration officers suspected that the applicant had immigrant intent and she was placed into secondary inspection. The applicant admitted that she had resided in the United States for 9.5 months out of the past 10 months. The applicant admitted that she had been residing with and working for her fiancé, a U.S. citizen, since December 2006. The applicant admitted that she had originally started working as a contractor for [REDACTED] in the United States for her now fiancé's company. The applicant admitted that she no longer worked for SLE and that she was working directly for [REDACTED] a U.S. company, for \$3,500 per month. The applicant admitted that her salary was wired to her Mexican bank account in order to avoid taxes. The applicant admitted that her job entailed working at [REDACTED] for approximately five hours per week. The applicant admitted that she would tell Mexican workers at [REDACTED] what to do in the mornings and then return in the evenings to inform them of where to go the following day. The applicant admitted that she had been preparing for a wedding, getting rid of her property in Honduras and preparing to file immigration papers in the United States. The applicant admitted that she had left her home country because she was in the process of getting married to a U.S. citizen. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documentation. On October 28, 2005, 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).

On November 11, 2007, the applicant married her U.S. citizen spouse in Honduras. On December 18, 2008, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, indicating that she resided in Honduras. On January 13, 2009, the Form I-130 was approved. On September 2, 2009, the applicant filed the Form I-212, indicating that she resided in Honduras. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 spouse and now lawful permanent resident adult son.

The field office director determined that the applicant is inadmissible under 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 or willful misrepresentation of a material fact. The field office director determined that the applicant was required to file the Form I-601 and Form I-212 simultaneously with the U.S. Consulate abroad. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated May 13, 2010.

On appeal, counsel contends that the field office director erred in finding that the applicant was required to file a Form I-601. Counsel contends that the favorable factors in the applicant's case outweigh the adverse factors and a favorable exercise of discretion is warranted. *See Counsel's Brief*, dated June 23, 2010. In support of his contentions, counsel submits the referenced brief, letters from the applicant's family members, financial documentation, medical documentation, a police clearance

letter and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

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

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.- Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

....

The record reflects that the applicant claims that she has remained outside the United States and lived in Honduras since October 28, 2007.¹

¹ The AAO notes that counsel fails to submit evidence to establish that the applicant is currently outside the United States and has remained outside the United States since her removal. If it is later found that the applicant illegally reentered the United States *at any time* after her 2007 departure, she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until she has remained outside the United States for a period of ten years. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

While counsel contends that the applicant is not required to file the Form I-601, evidence in the record establishes that 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 and gaining admission by fraud by presenting nonimmigrant documentation with immigrant intent on multiple occasions, but specifically on October 27, 2007, May 13, 2007 and February 14, 2007. The record establishes that the applicant had resided in the United States for 9.5 months out of the past 10 months, and she admitted to working directly for Postin Products, a U.S. company owned by her then fiancé. Furthermore, the applicant admitted that she was residing with her then fiancé, had been preparing for a wedding, was getting rid of her property in Honduras, and was preparing to file immigration papers in the United States to legalize her status. Based on this information, it is determined that the applicant had immigrant intent at the time she sought entry into the United States as a nonimmigrant. To seek 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).

As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.