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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

[redacted]

FILE: [redacted] Office: MEMPHIS, TN Date: FEB 08 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)(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,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Memphis, Tennessee, 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 Colombia who, on September 20, 1991, appeared at the Los Angeles International Airport. The applicant presented a photo-substituted and identity page altered Colombian passport containing a U.S. nonimmigrant visa bearing the name ' ' The applicant was placed into secondary inspection. The applicant insisted that she was the person identified in the documents presented at the port of entry. On September 20, 1991, the applicant was placed into immigration proceedings under the name ' ' The applicant eventually admitted to her true identity before the immigration court. On January 9, 1992, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States.

On March 3, 1997, the applicant married , a naturalized U.S. citizen. On March 17, 1997, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on November 13, 1997. On March 9, 2002, passed away. On February 5, 2003, the applicant married her current lawful permanent resident spouse. On March 3, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Petition for Amerasian, Widower or Special Immigrant (I-360). On May 23, 2007, the Form I-485 and Form I-360 were denied. On July 3, 2007, the applicant's lawful permanent resident spouse filed a Form I-130 on behalf of the applicant. On December 13, 2007, the applicant filed a motion to reopen with the immigration judge. On December 20, 2007, the immigration judge denied the motion to reopen. The applicant filed an appeal of the denial of the motion to reopen with the Board of Immigration Appeals (BIA). On January 10, 2008, the BIA denied the applicant's motion for stay of removal. On January 11, 2008, the applicant filed a second motion to reopen and stay of removal with the immigration judge. On January 14, 2008, the immigration judge denied the applicant's motion to reopen and stay of removal. On January 14, 2008, the applicant was removed from the United States and returned to Colombia where she claims to have since resided.

On December 17, 2009, the Form I-130 was approved. On May 13, 2010, the applicant filed the Form I-212, indicating that she resided in Colombia. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 reside in the United States with her lawful permanent resident spouse and two U.S. citizen children.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated July 30, 2010.

On appeal, the applicant contends that she should be reunited with her family in the United States. *See Applicant's Letter,* undated. In support of her contentions, the applicant submits the referenced letter, letters from friends and family, financial- and immigration- documentation 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 Colombia since her removal.[1]

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[1] The applicant fails to submit evidence to establish that she is currently outside the United States and has remained outside the United States since her removal. The AAO notes that the file reflects that a Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27) indicates that the applicant resides in Miami, Florida. If it is later found that the applicant illegally reentered the United States *at any time* after her 2008 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).

The applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence in the United States, from April 1, 1997, the date on which unlawful presence provisions were enacted, until December 20, 2007, the date on which she was granted a brief stay of removal, and is seeking admission within ten years of her last departure.[2] Additionally, 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 obtain admission into the United States by fraud. To seek waivers of these grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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.

[2] The immigration judge granted the applicant a stay of removal on December 20, 2007 until such time as the motion to reopen was adjudicated. The record reflects that the motion to reopen was denied on the same day.