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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: SAN DIEGO, CA Date: FEB 22 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:

[redacted]

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 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 April 6, 2008, appeared at the San Diego, California port of entry. The applicant presented her DSP-150 nonimmigrant border crossing card. The applicant claimed to be visiting her boyfriend with whom she was traveling. Immigration officers suspected that the applicant had immigrant intent and she was placed into secondary inspection. During inspection immigration officers discovered an Arizona Western College (AWC) Student identification card for the applicant. The applicant admitted that the "boyfriend" with whom she was traveling was actually her U.S. citizen husband. The applicant admitted that she had resided in the United States since December 2007. The applicant admitted that she had been residing with her husband and was attending AWC. The applicant admitted that she and her husband had removed their wedding rings to reduce suspicion as to her immigrant intent at the port of entry. The applicant admitted that her purpose for entering the United States was to live with her husband, form a family and study at AWC. The applicant admitted that she planned to reside in the United States her entire life. 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 April 6, 2008, 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 June 2, 2008, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, indicating that she resided in Mexico. On August 6, 2008, the Form I-130 was approved. On April 3, 2009, the applicant filed the Form I-212, indicating that she resided in Mexico. 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 U.S. citizen child.[1]

The district director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision,* dated August 3, 2010.

On appeal, 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 September 21, 2010. In support of his contentions, counsel submits only the referenced brief. 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

Status, as well as a birth certificate for her child.

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 Mexico since her removal.[2]

The AAO finds 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 the United States by fraud by presenting nonimmigrant documentation with immigrant intent on April 6, 2008. The record establishes that the applicant resided in the United States with her husband and attended school. The record reflects that the applicant removed her and her husband's wedding rings in order to reduce suspicion as to her immigrant intent. The record reflects that the applicant's purpose in returning to the United States was to resume her residence and form a family with her husband in the United States. The record reflects that the applicant had intent to reside in the United States for the rest of her life. The AAO therefore finds 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).

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[2] 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 2008 removal, 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).

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.