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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

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FILE:



Office: HOUSTON, TX

Date: JAN 24 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 and citizen of Mexico who, on May 1, 1998, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past her authorized stay, which expired on October 30, 1998. On April 9, 1999, the applicant was placed into immigration proceedings for having overstayed her nonimmigrant status. On February 23, 2000, the immigration judge ordered the applicant removed from the United States *in absentia*.

On February 25, 2004, the applicant's naturalized U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, indicating that the applicant resided in the United States.¹ On November 17, 2004, the Form I-130 was approved. On October 9, 2008, the applicant filed the Form I-212, indicating that she resided in Mexico. 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 naturalized U.S. citizen spouse.

The field office director determined that 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. The field office director determined that the applicant failed to simultaneously file the Form I-212 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) with the U.S. Consulate abroad that has jurisdiction over the applicant's residence. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated January 27, 2010.

On appeal, counsel contends that the applicant was not informed that she was required to simultaneously file the Form I-601 with the Form I-212. Counsel contends that the Form I-212 should be reopened to permit the applicant to file the Form I-601. Counsel contends that the applicant has resided outside the United States for more than ten years.² *See Attachment to Form I-290B and Response to Request for Further Evidence*, dated January 25, 2010 and December 6, 2010. In

¹ While counsel contends that the applicant has never entered the United States without a valid visa and that she has not reentered the United States since she departed in October 1999, the record clearly reflects that the applicant was present in the United States at the time the Form I-130 was filed and there is no record to establish that she legally reentered the United States. Moreover, counsel failed to submit evidence in response to a request for evidence to establish the applicant's periods of residence abroad.

² Counsel, in response to a request for further evidence, stated that the applicant had submitted documentation to the U.S. Consulate abroad establishing that the applicant had resided outside the United States for more than ten years; however, the U.S. Consulate abroad determined that the applicant was still ineligible for admission and required permission to reapply for admission. Additionally, counsel failed to provide a copy of the documentation he claims was submitted to the U.S. Consulate abroad.

support of his contentions, counsel submits the referenced attachment and letter, along with copies of the denial from the U.S. Consulate abroad. 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. [emphasis added]

....

(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] has consented to the alien's reapplying for admission.

(iii) Waiver

The [Secretary], in the [Secretary's] discretion, 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—

(1) the alien's battering or subjection to extreme cruelty; and

(2) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The record reflects that the applicant claims she has remained outside the United States and lived in Mexico since at least October 9, 2008.

The AAO notes that 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 October 30, 1998, the date on which her nonimmigrant status expired, until an unknown date in 1999, the date on which she departed the United States, and is seeking admission within ten years of her last departure. To seek a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), 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.

Beyond the decision of the field office director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for entering the United States without admission or parole after having been removed from the United States, and does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Therefore, the applicant is statutorily ineligible to apply for permission to reapply for admission into the United States.³

ORDER: The appeal is dismissed.

³The AAO conducts appellate review on a *de novo* basis *Soltune v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).