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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: LOS ANGELES, CA Date: MAR 07 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:

[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 Field Office Director, Los Angeles, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted and the AAO's previous decision to dismiss the appeal will be affirmed.

The applicant is a native and citizen of Mexico who, on February 3, 2000, appeared at Dulles International Airport. The applicant applied to transit through the United States without a visa (TWOV) by presenting her Mexican passport and a ticket reflecting a transfer flight to Mexico City. The applicant was placed into secondary inspection. In secondary inspection, it was discovered that the applicant had resided in the United States from 1982 until January 2000. The applicant admitted that she had been attending college in the United States and that she did not have documentation permitting her to reside or attend school in the United States. The applicant was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence and seeking admission within ten years of her last departure. On February 3, 2000, the applicant was issued a Notice of Parole/Lookout Intercept (Form I-160), was refused admission to the United States and was returned to Mexico.

On May 2, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) as a derivative on an approved Petition for Alien Worker (Form I-140) filed on her husband's behalf. The Form I-485 indicates that the applicant entered the United States without inspection on February 15, 2000. On July 22, 2009, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On March 19, 2008, the applicant filed the Form I-212, indicating that she continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I). 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 now lawful permanent resident spouse, her lawful permanent resident mother and naturalized U.S. citizen brother.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, for illegally reentering the United States after having accrued more than one year of unlawful presence in the United States. 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 June 15, 2009.

On appeal, counsel contended that, on February 3, 2000, the applicant was not seeking admission to the United States; that the Form I-160 was wrongfully issued and served on the applicant under duress; and that the field office director erred in not reflecting these facts in his decision and thus wrongfully denied the applicant's Form I-212.[1] *See Form I-290B,* dated June 24, 2009. In support of her contentions, counsel submitted only the referenced Form I-290B.

[1] The AAO notes that the field office director's decision does not refer to the Form I-160 or whether the applicant intended to enter the United States at that time. The field office director did not base his decision on these facts and these facts are not necessary to establish the field officer director's basis for denying the applicant's Form I-212.

In the motion to reconsider, counsel contends that it is unlawful to bar the applicant from relief. *See Form I-290B*, dated February 8, 2010. In support of her motion to reconsider, counsel submits the referenced Form I-290B, a brief, country condition reports and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

The regulation at 8 C.F.R. § 103.5(a) provides, in pertinent part:

> (3) *Requirements for motion to reconsider.*
> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel contends that the applicant is exempt from deportation as a national of the United States. Counsel's contentions are unpersuasive and illogical. The case law to which counsel cites does not apply to the applicant. The applicant, while she may have resided illegally in the United States for an extended period of time and feels allegiance to the United States, has no claim to being a national of the United States. The applicant was not born in an outlying possession of the United States. One cannot be a national of the United States simply due to ties to the United States. The applicant is an alien and, therefore, subject to the grounds of inadmissibility in section 212 of the Act.

Counsel contends that the holding of *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007), is not applicable to the applicant because the applicant had reasonable reliance on the idea, mistaken or not, of being a U.S national entitled to travel outside the United States. As discussed above, the applicant is not a national of the United States and the statements made by the applicant at the port of entry clearly reflect that she was not under the mistaken belief that she was a U.S. citizen or national.

Counsel contends that the applicant was inspected on an unforeseen and unintended transit into the United States and that the applicant should not have been found to be seeking admission and is, therefore not inadmissible. Counsel makes further contentions in regard to the applicant's favorable factors and violations of due process rights. Counsel's contentions are unpersuasive. The applicant's inadmissibility is not based on her attempt to enter the United States on February 3, 2000, but on her accrual of unlawful presence in the United States from April 1, 1997, the date on which unlawful presence provisions were enacted, until January 2000, the date on which the applicant left the United States and returned to Mexico and her subsequent reentry into the United States without inspection on February 15, 2000.

Finally, counsel contends that it should be kept in mind that the law is unfinished and as such it is an imperfect and incomplete reflection of justice and that we all have an obligation to bring it closer to the standard where it falls short. The AAO finds that none of counsel's contentions actually relate to the applicant's grounds of inadmissibility or establish that the decision was based on an incorrect application of law or policy.

As discussed in the AAO decision, the applicant is statutorily *ineligible* to apply for permission to reapply for admission under section 212(a)(9)(C)(i) of the Act and, as such she must apply for permission to reapply for admission from outside the United States and only after she has remained outside the United States for a period of ten years. The applicant will be required to show proof of residence outside the United States for the full ten-year period before she is eligible to file for permission to reapply for admission. The record clearly establishes that the applicant is currently present in the United States. The AAO, therefore, finds that it is not possible for the applicant to be able to prove that she is eligible to apply for permission to reapply for admission at this time. The AAO cannot grant an applicant's Form I-212 if he or she in ineligible. As discussed in its prior decision, the AAO finds that the applicant is ineligible to apply for permission to reapply for admission because she is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and has not remained outside the United States for the required ten years.

After a careful review of the record, it is concluded that the applicant has failed to establish that the AAO's prior decision was in error. Accordingly, the order dismissing the appeal is affirmed.

ORDER: The order dismissing the appeal is affirmed. The application remains denied.