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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: [REDACTED] Office: SEATTLE, WA Date: MAR 29 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)

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 application for permission to reapply for admission after removal was denied by the Field Office Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed from the United States and subsequently entering the United States without being admitted. The applicant seeks permission to reapply for admission after removal pursuant to 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 family.<sup>1</sup>

On June 8, 1997, the applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Act. The applicant subsequently entered the United States without inspection in October 1997. As such, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed under section 235(b)(1) of the Act and reentering the United States without being admitted. Therefore, the applicant must receive permission to reapply for admission.

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

(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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

The AAO has, in a separate decision, dismissed the applicant's appeal of the denial of the Form I-601, which the applicant filed in relation to her inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act and willful misrepresentation under section 212(a)(6)(C)(i) of the Act.

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<sup>1</sup> Although the record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from [REDACTED], the AAO will consider the applicant to be self-represented [REDACTED] is currently suspended from practicing before the Department of Homeland Security.

When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual* provides the following guidance:

Chapter 43 Consent to Reapply After Deportation or Removal  
43.2 Adjudication Processes:

(d) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the AAO has determined that the applicant is not eligible for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act and has dismissed her appeal of the Form I-601 denial, no purpose would be served in considering her application for permission to reapply for admission. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.<sup>2</sup>

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The AAO also notes that consent to reapply under section 212(a)(9)(C)(ii) of the Act can only be granted to one who has left the United States, is currently abroad and is seeking admission to the United States at least ten years after the date of his or her last departure. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The AAO notes prior counsel's contention that *Perez-Gonzalez v. Ashcroft*, 379 F. 3d 783 (9<sup>th</sup> Cir. 2004) is applicable to the applicant's case. *Brief in Support of Appeal*, at 2, undated. The AAO notes, however, that the Ninth Circuit overruled its holding in *Perez-Gonzalez v. Ashcroft*. See *Gonzalez v. Dep't of Homeland Security*, 508 F. 3d 1227 (9<sup>th</sup> Cir. 2007). In *Gonzalez v. Dep't of Homeland Security*, the Ninth Circuit held that it was bound by the Board of Immigration Appeals' (BIA) interpretation of section 212(a)(9)(C) of the Act in *Matter of Torres-Garcia*. Therefore, in the event that the applicant receives a Form I-601 approval in the future, the requirements from *Matter of Torres-Garcia* would need to be met in order to file a Form I-212.