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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
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Washington, D.C. 20529-2090  
U.S. Citizenship  
and Immigration  
Services



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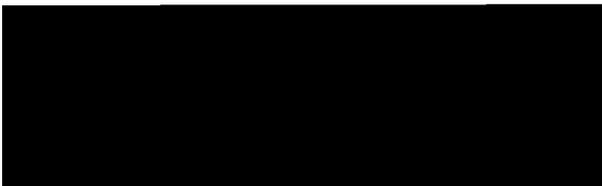
DATE: OFFICE: LOS ANGELES, CALIFORNIA FILE:

APR 10 2012

IN RE: Applicant:

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

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,

for  
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 it 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 expeditiously removed from the United States on May 14, 2000 for a period of five years. On May 16, 2000 the applicant was expeditiously removed again from the United States, for a period of twenty years. The applicant subsequently entered the United States without inspection sometime between May 16, 2000 and April 6, 2001 when she married her spouse in Los Angeles, California. The applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien who has been ordered removed under section 235(b)(1) and who reenters the United States without being admitted. The applicant 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 U.S. citizen spouse and children.

The Field Office Director determined that the applicant was ineligible to obtain consent to reapply for admission to the United States and denied the Form I-212 accordingly. See *Decision of the Field Office Director*, dated December 6, 2008.

On appeal, counsel asserts that the applicant should not have been required to file a Form I-212 since USCIS failed to establish that the applicant attempted to enter the United States using fraudulent documents or that the applicant had been previously removed. See *Counsel's Brief*, dated February 4, 2009. Counsel further asserts that the applicant's Form I-212 was specifically denied due to her §212(a)(6)(c)(i) inadmissibility which can be overcome by a §212(i) waiver. *Id.*

The record contains, but is not limited to: Forms I-290B; counsel's briefs in support of appeals; Forms I-212, I-601 and denials of each; hardship letter; medical records; marriage and birth records; Forms I-485 and I-130; and the applicant's inadmissibility and removal records. The entire record was reviewed in rendering a decision on appeal.

Section 212(a)(9) 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, 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.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States and U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the record reflects that the applicant was expeditiously removed from the United States on both May 14, 2000 and May 16, 2000 and she entered the United States without inspection shortly thereafter. The record contains no documentary evidence that the applicant has left the United States again since her May 16, 2000 removal. Thus the applicant is currently statutorily ineligible to apply for permission to reapply for admission.<sup>1</sup>

The AAO notes that in these proceedings, the applicant bears the burden of establishing that she is not inadmissible under any provision of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361. As noted above, the record includes documents relating to the applicant's expedited removals on May 14, 2000 and May 16, 2000. The record shows that the applicant was personally served, both on May 14, 2000 and May 16, 2000, with Form I-860, Notice and Order of Expedited Removal; that the applicant signed the Forms I-296, Notice to Alien Ordered Removed/Departure Verification and I-867B, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act on the same two dates. If the applicant has lost this documentation she may request a copy by filing a Freedom of Information Act Request (FOIA). Counsel has failed to make a proper inquiry in order to obtain such documentation. Further, the AAO notes that the applicant herself confirmed under oath in the form of a sworn statement that she had previously entered the United States unlawfully and that at the time of her removals had been living in the U.S. for ten years. In addition, the Form I-212 itself indicates that the applicant's date of deportation or removal from

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<sup>1</sup> In his decision, the Field Office Director did not specify the grounds of inadmissibility which required the filing of the Form I-212. For the reasons stated above, the AAO finds that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. An application or petition that fails to comply with the technical requirements of law may be denied by the AAO even if the Field Office Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc., v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

the United States is "5/00." See *Form I-212*, question 13, dated April 8, 2007. On the *Form I-601*, the applicant asserts: "Attempted entry May 2000 with a Mexican passport belonging to another person. I'm applying for a waiver under 212(i) inadmissibility for fraud." See *Form I-601*, question 10, dated April 8, 2007. Therefore, the AAO finds that counsel's assertions on appeal are not persuasive and that the record amply demonstrates that the applicant was removed from the United States for five (5) years on May 14, 2000, and for twenty (20) years on May 16, 2000, following two attempted U.S. entries using false documents for which she was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

As stated above, the applicant is inadmissible under section 212(a)(9)(C) of the Act because she was removed on May 14, 2000 and May 16, 2000, and she subsequently entered the United States without inspection prior to her April 6, 2001 marriage in Los Angeles, California to the applicant's spouse. The record contains no documentary evidence that the applicant has departed the United States since that entry without inspection. As the applicant has not been outside of the United States for a total of ten years since her removal, she is currently statutorily ineligible to apply for permission to reapply for admission.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

Section 291 of the Act, 8 U.S.C. §1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. The applicant in the instant case does not qualify for the exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a *Form I-212*. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.