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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H4

DATE: APR 26 2012

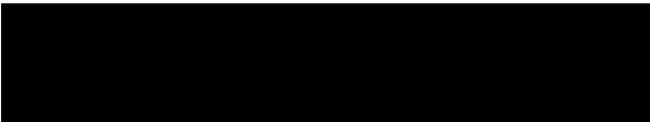
OFFICE: LOS ANGELES

FILE: 

IN RE: 

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:



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,

f s r

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. The applicant was ordered removed from the United States on March 8, 1999, based upon her inadmissibility for willfully misrepresenting a material fact in seeking admission to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i). The applicant attempted to enter the United States using a Form I-193 issued to another individual. The applicant was removed from the United States on March 8, 1999. The applicant subsequently entered the United States on or about the same date, without admission or parole. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of 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), 8 U.S.C. §§ 1182(a)(9)(A)(iii), in order to reside in the United States with her lawful permanent resident spouse and United States citizen children.

The Field Office Director determined that the applicant did not meet the requirement for consent to reapply because the applicant was currently in the United States after reentering illegally and ten years had not elapsed since the date of her last departure, and denied Form I-212 accordingly. *See Decision of Field Office Director*, dated December 5, 2011.

On appeal, counsel for the applicant asserts that *Rodriguez-Echeverria v. Mukasey*, 534 F. 3d 1047 (9th Cir. 2008), raises an issue concerning the applicant's rights in her expedited removal proceedings and the legality of her removal order. Counsel further asserts that the applicant's departure from the United States should not be considered a departure because it was brief and casual in nature. The entire record was reviewed and considered in rendering this decision.

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.

The applicant was removed from the United States under a removal order on March 8, 1999 and illegally returned to the United States on or about the same date. The applicant, therefore, is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

This applicant was removed pursuant to an expedited removal order on March 8, 1999, after attempting to enter the United States with a Form I-193 belonging to another individual. Counsel for the applicant asserts that the applicant was not advised of her rights and that, based on the Ninth Circuit's decision in *Rodriguez-Echeverria v. Mukasey*, 534 F.3d 1047 (9th Cir. 2008), her expedited removal order is legally insufficient. Unlike this applicant, the alien in *Rodriguez-Echeverria v. Mukasey* was ordered removed by an immigration judge after service with a Notice to Appear (NTA) and appearance before the court in formal proceedings. *Id.* According to the regulations, “[e]xcept in the case of an alien subject to the expedited removal provisions of section 235(b)(1)(A) of the Act, an alien arrested without warrant and placed in formal proceedings under section 238 or 240 of the Act will be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government.” 8 C.F.R. § 287.3(c) (emphasis added). Both the Ninth Circuit and the Board of Immigration Appeals have determined that immigration officers need only advise aliens of their rights after an alien is placed into formal proceedings, pursuant to the filing of an NTA. *Matter of E-R-M-F- & A-S-M-*, 25 I&N Dec. 580 (BIA 2011); *Samayoa-Martinez v. Holder*, 558 F.3d 897 (9th Cir. 2009). There was no NTA filed in relation to this applicant and she was not placed into formal immigration proceedings. Accordingly, the applicant's expedited removal order was properly issued, in conformance with the regulations.

Counsel asserts that the applicant's departure from the United States on March 8, 1999 was not a true departure because it was brief, temporary, and casual. It is noted that counsel does not provide any legal basis for asserting that the applicant's departure from the United States is not a departure, as considered by section 212(a)(9)(C) of the Act. Further, the Act defines brief and casual absences from the United States in the context of continuous presence and residence for temporary protected status, under section 1244.1 of the Act. However, even under that section of the Act, a brief, casual, and innocent absence from the United States does not encompass a departure pursuant to a removal order. Accordingly, the applicant's removal from the United States on March 8, 1999, is a departure from the United States, pursuant to an expedited removal order.

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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant is currently residing in the United States and remained outside the United States for less than a day. She is currently statutorily ineligible to apply for permission to reapply for admission and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed