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



H4

DATE: **FEB 10 2012**
IN RE:

OFFICE: LOS ANGELES, CALIFORNIA

File:

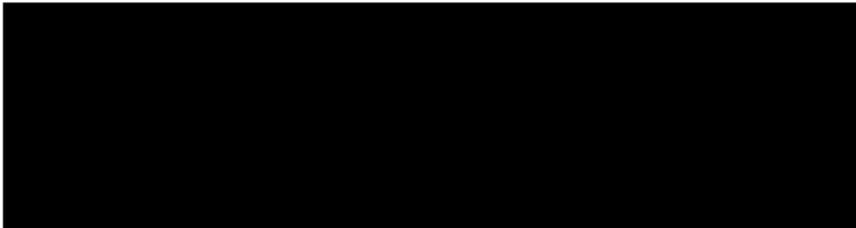


Applicant:



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,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, denied the application for permission to reapply for admission into the United States, 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 found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed from the United States and again seeking admission within 5 years of the date of such removal. The applicant through counsel 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 husband and their children in the United States.

Section 212(a)(9) of the Act provides 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 5 years of the date of such removal ... 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 ... 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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission

The record reflects that the applicant attempted to gain admission to the United States on January 16, 1997, by presenting to U.S. immigration officials a U.S. birth certificate that did not lawfully belong to her. She was taken into custody by the immigration officials, ordered excluded by the Immigration Judge under section 212(a)(7)(A)(i)(I) of the Act, and deported from the United States on January 23, 1997. The record further reflects that she illegally entered the United States without inspection by U.S. immigration officials on or about January 28, 1997, and has remained to date.

Subsequently, on July 30, 2007, she filed an Application to Register Permanent Residence or Adjust Status (Form I-485) as the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant is therefore inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and must receive permission to reapply for admission.¹

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 under section 212(a)(6)(C) of the Act. 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 statutorily ineligible to apply for a waiver of grounds of inadmissibility 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.

ORDER: The appeal is dismissed.

¹ The AAO notes that the Field Office Director concluded that the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.