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

H4

Date: **FEB 22 2012**

Office: EL PASO, TEXAS

FILE: [REDACTED]

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)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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, El Paso, Texas, 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 found to be inadmissible under section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C), for having reentered the United States illegally after having voluntarily departed following an aggregate period of more than one year of unlawful presence in the United States.

The record contains the Form I-212 and supporting evidence, and other documentation.

On appeal, counsel states that the applicant entered the United States without inspection in 1993 or 1994. Counsel states that the applicant was arrested for possession of drug paraphernalia in 2000, and was granted voluntary departure from the United States in 2000. Counsel states that the applicant reentered the United States. Counsel maintains that in 2007 the applicant was placed in removal proceedings and was ordered removed to Mexico. Counsel indicates that the applicant has remained outside of the United States since then. Counsel maintains that section 212(9)(A)(iii) of the Act states that section 212(9)(A)(i) of the Act does not apply if the Attorney General consented to the alien's reapplying for admission. Thus, counsel contends that the applicant can apply for permission to reapply for admission to the United States as section 212(9)(A)(i) of the Act authorizes the Attorney General to grant consent to a person who has second or subsequent removals from the United States. Counsel states that an immigration judge granted the applicant's application for voluntary departure from the United States in 2000 and that in 2007 the immigration judge ordered the applicant's removal from the United States. Counsel indicates that the language of section 212(9)(A)(i) does not bar the applicant from applying for permission to reapply for admission to the United States as it does not mention unlawful presence. Counsel claims that the statute does mention that permission to reapply can be granted despite a second or subsequent removal from the United States.

The applicant was found to be inadmissible to the United States under section 212(a)(9)(C) of the Act, which 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 Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant previously claimed to have entered the United States without inspection on August 19, 1999. However, counsel has stated that the applicant entered the United States without inspection sometime in 1993 or 1994, which is consistent with other evidence in the record reflecting that the applicant was in the United States since 1993. On March 15, 2000, the applicant was placed in removal proceedings and ordered to appear before an immigration judge. On April 10, 2000, a Notice of Hearing in Removal Proceedings was issued by mail to the applicant for a master hearing on April 10, 2000. On May 16, 2000, the immigration judge ordered that the applicant be granted voluntary departure from the United States on or before September 13, 2000. On September 13, 2000, the applicant returned to Mexico. Sometime in 2000, the applicant reentered the United States without inspection. On April 11, 2007, the applicant was placed in removal proceedings and ordered to appear before an immigration judge. On April 18, 2007, a Notice of Hearing in Removal Proceedings was issued by mail to the applicant for a master hearing on April 19, 2007. On May 3, 2007, the immigration judge denied the applicant's application for voluntary departure and ordered that the applicant be removed to Mexico. On May 10, 2007, the applicant was removed from the United States.

In sum, based on the foregoing, the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The applicant accrued unlawful presence in the United States from April 1, 1997, the date the unlawful provisions took effect, until she voluntarily departed on September 13, 2000. When the applicant subsequently reentered the United States without inspection sometime in 2000, she became subject to the permanent bar of section 212(a)(9)(C)(i)(I) of the Act.

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 10 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). 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* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on May 10, 2007. The applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.