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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**



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DATE: **JAN 10 2012** OFFICE: LOS ANGELES, CALIFORNIA FILE:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Prior Immigration Violations 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. 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, 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 Guatemala who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted. The applicant does not contest this finding of inadmissibility. Rather, she 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 Lawful Permanent Resident spouse and her son.

The Field Office Director determined that the applicant failed to meet the eligibility requirements for consent to reapply for admission and that section 241(a)(5) of the Act barred the approval of the applicant's Form I-212; and thereby, denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated March 19, 2010.

On appeal, the applicant asserts that the case of [REDACTED] (9th Cir. 2004) permitted her to adjust status due to hardship to her spouse upon filing Form I-212 and in spite of the reinstatement provisions of the Act. *See Notice of Appeal or Motion (Form I-290B)*, dated April 16, 2010. The applicant further asserts she has the right to a formal hearing before an Immigration Judge if she is subject to the reinstatement provisions. *Id.*

The record includes, but is not limited to: letters of support; medical records; financial documents; school records; and criminal records.¹ The entire record, with the exception of the untranslated Spanish documents, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(C) of the Act states:

(C) Aliens unlawfully present after previous immigration violations.-

¹ The AAO notes that the record includes letters of support in the English and Spanish languages. 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The AAO also notes that some of the letters of support in the Spanish language do not contain a certified translation to the English language. Accordingly, the AAO will not consider these letters of support.

- (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 of Homeland Security has consented to the alien's reapplying for admission.

The record reflects that the applicant initially entered the United States on or about June 3, 1985 without inspection by U.S. immigration officials. Upon apprehension, the applicant identified herself as [REDACTED] born on "March 2, 1968" and was found to be deportable pursuant to section 212(a)(2) of the Act, 8 U.S.C. § 1251(a)(2). The Immigration Judge issued an order of deportation on June 26, 1985, pursuant to section 241(a)(2) of the Act. The applicant was taken into custody, and later escaped from the detention site. It is unclear when the applicant left the United States; however, the record reflects that the applicant reentered the United States in or around February 1998 without permission or inspection by U.S. immigration officials, and has remained in the United States to date. Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II)² of the Act, and is statutorily ineligible to apply for permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) 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). [REDACTED]

[REDACTED] and deferred to the BIA's holding that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-

² An application or petition that fails to comply with the technical requirements of the 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 (9th 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).

year bar. The Ninth Circuit clarified that its holding in [REDACTED] applies retroactively, even to those aliens who had Form I-212 applications pending before [REDACTED].

[REDACTED]. [REDACTED] F.3d 684 (9th Cir. 2011) (stating that the general default principle is that a court's decisions apply retroactively to all cases still pending before the courts). In the present matter, the record does not reflect that the applicant has satisfied the requirements for the exception to inadmissibility under section 212(a)(9)(C)(ii) of the Act. Accordingly, she is currently statutorily ineligible to apply for permission to reapply for admission, and is therefore, inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

Section 241(a) of the Act states in pertinent part:

(5) Reinstatement of removal orders against aliens illegally reentering.- If the Attorney General [Secretary of Homeland Security] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The regulation at 8 C.F.R. § 241.8 states:

(b) *Notice.* If an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

A review of the record indicates that the applicant in the present matter was not issued a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) as required by 8 C.F.R. § 241.8(b). Accordingly, the AAO finds that the applicant's prior removal order has not been reinstated and that she is not precluded from applying for relief by section 241(a)(5) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish that she is eligible for the benefit being sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.