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



U.S. Citizenship
and Immigration
Services

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Date: **JAN 26 2012**

Office: EL PASO, TEXAS



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)(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,

Perry Rhew

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 removed from the United States on July 11, 2005. The applicant was found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 his wife.

The field office director determined that the applicant, who had previously been admitted as a Lawful Permanent Resident, was ineligible for a waiver of inadmissibility because he was convicted of an aggravated felony.¹ The field office director denied the Form I-212 accordingly, as no purpose would be served in granting permission to reapply because the applicant was inadmissible under section 212(a)(2) of the Act and no waiver is available to him under section 212(h) of the Act. See *Field Office Director's Decision*, dated October 29, 2010.

On appeal, the applicant's counsel provides documentation to demonstrate that the applicant's aggravated felony conviction was reversed and dismissed. The applicant's attorney also provides evidence regarding the potential emotional and financial hardships that the qualifying spouse and family would suffer if the applicant were unable to remain in the United States.

The record contains documentation regarding the criminal history of the applicant, a letter from the applicant's attorney, an approved Petition for Alien Relative (Form I-130), birth certificates for the applicant's children, a letter from the applicant, a letter from the applicant's mother, a letter from the applicant's employer, letters from the applicant's siblings and proof of their naturalizations, letters from other family members, a certificate regarding the applicant's training, copies of awards given to the applicant's daughter and photographs.

Section 212(a)(9) of the Act states 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 five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

¹ The Field Office Director determined that the applicant's conviction for false imprisonment and battery against a household member rendered the applicant inadmissible under section 212(a)(2) of the Act and that he required a waiver under section 212(h) of the Act, but was not eligible for such a waiver because he was convicted of a aggravated felony.

- (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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) 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 Secretary has consented to the alien's reapplying for admission.

....

(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.

The record reflects that the applicant was admitted to the United States as an alien lawfully admitted for permanent residence on October 24, 1986. The applicant was convicted in the State of New Mexico, Third Judicial District, County of Dona Ana of False Imprisonment and sentenced to 18 months confinement followed by a year of parole. The applicant was also convicted of Battery Against a Household member, and sentenced to 364 days confinement. For his conviction for False Imprisonment, the field office director found the applicant was an aggravated felon as defined by section 101(a)(43) of the Act and therefore permanently ineligible for a waiver of inadmissibility under section 212(h) of the Act for having been convicted of a crime involving moral turpitude. See *Field Office Director's Decision*, dated October 29, 2010. However, on appeal, the applicant's attorney provided sufficient documentation to demonstrate that the applicant's convictions for False Imprisonment and Battery Against a Household member were reversed and the charges were dismissed. As such, the applicant has not been convicted of an aggravated felony, and is no longer ineligible to apply for a waiver under section 212(h) of the Act.

However, the applicant was removed from the United States on July 11, 2005 and the record indicates that he is currently living in the United States. There is no indication that the applicant was inspected and admitted or paroled into the United States after his removal in July of 2005. The applicant is therefore inadmissible under 212(a)(9)(C)(i)(II) of the Act for having reentered without being admitted or paroled into the United States.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center 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).

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). To avoid inadmissibility under section 212(a)(9)(C) of the Act, the applicant must have departed the United States at least ten years ago, remained outside the United States during that time, and U.S. Citizenship and Immigration Services (USCIS) must consent to the applicant's reapplying

for admission. The record reflects that the applicant was removed from the United States on July 11, 2005 after he had been convicted of a crime defined as aggravated felony. After his removal on July 11, 2005, the applicant reentered the United States without inspection and he continues to reside in the United States. He is, therefore, currently statutorily ineligible to apply for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act. As such, no purpose would be served in adjudicating his application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

As the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C) of the Act, the AAO finds no purpose would be served in considering the merits of her Form I-212 waiver application. The appeal will be dismissed.

ORDER: The appeal is dismissed.