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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**



HL4

DATE: JUN 20 2012 Office: SAN BERNARDINO, CA

FILE:

IN RE: Applicant:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 application for permission to reapply for admission after removal was denied by the Field Officer Director, San Bernardino, California, and 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)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed from the United States and subsequently entering the United States without being admitted. The applicant seeks permission to reapply for admission after removal pursuant to 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 family.

The field office director found that the applicant does not meet the requirements for consent to reapply and she denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. *Decision of the Field Office Director*, dated November 7, 2011.

On appeal, counsel asserts that the applicant was not advised of her constitutional right to remain silent and retain counsel when she was arrested and she is not ineligible for cancellation of removal due to her brief departure from the United States. *Form I-290B*, received December 9, 2011.

The record includes, but is not limited to, the Form I-290B and previously submitted documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

On January 30, 2005, the applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Act after she attempted to procure admission to the United States with a false identity and lawful permanent resident card not belonging to her. The applicant subsequently entered the United States without inspection on the same day. The AAO finds that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed under section 235(b)(1) of the Act and reentering the United States without being admitted.

The AAO notes that the applicant is not applying for cancellation of removal, therefore, it will not address counsel's claim related to cancellation of removal. Counsel's claim regarding the right to remain silent and retain counsel pertains to the basis on which the applicant was removed from the United States. Whether the applicant was properly removed is not before the AAO in the present matter. The applicant does not contest that she was in fact removed on January 30, 2005 and she subsequently entered without inspection.

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission 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 U.S. Citizenship and Immigration Services (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 January 30, 2005 and she returned to the United States on January 30, 2005. The applicant is currently residing in the United States and, therefore, has not remained outside the United States for 10 years since her last departure. She is currently statutorily ineligible to apply for permission to reapply for admission. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.