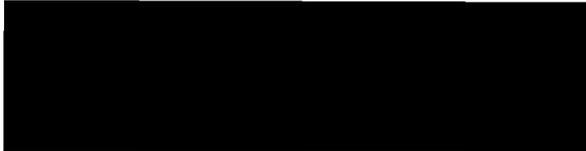


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



H4

Date: **MAR 01 2012**

Office: SAN BERNARDINO

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Thank you,

f-

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Field Office Director, San Bernardino, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The applicant's application for permission to reapply for admission will be conditionally approved.

The applicant is a native and citizen of El Salvador who entered the United States without inspection in 1992 and subsequently filed a Request for Asylum. The applicant's requests for asylum and withholding of deportation were denied in September 1995. The applicant was granted voluntary departure in September 1996 with an alternate order of deportation. *Decision of the Board of Immigration Appeals*, dated September 18, 1996. A Warrant of Removal/Deportation was issued on May 13, 1998. The record establishes that the applicant remained in the United States and failed to depart from the United States.

The field office director found that the applicant was inadmissible under section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C). The field office director further noted that the applicant was ineligible for a grant of the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) because the record failed to establish that the applicant had departed the United States following the order of removal and remained outside the United States for at least ten years. The applicant's Form I-212 was denied accordingly. *Decision of the Field Office Director*, dated June 27, 2011.

In support of the appeal, the applicant submits the following: the Form I-290B, Notice of Appeal; evidence that the applicant has been granted Temporary Protected Status; a copy of the applicant's Employment Authorization Card, valid from September 10, 2010 through March 9, 2012; a copy of the Form I-130 approval notice issued on behalf of the applicant; evidence of the applicant's mother's lawful permanent resident status; evidence of the applicant's children's U.S. citizenship; and support letters from the applicant's mother and children. The entire record was reviewed and considered in rendering this decision.

To begin, the record does not support the field office director's finding that the applicant is inadmissible under section 212(a)(9)(C) of the Act. Although the applicant was ordered removed from the United States in September 1995, as correctly noted by the field office director, the record does not establish that the applicant departed the United States after she was ordered removed or subsequently entered or attempted to enter the United States without being admitted. As such, the applicant is not inadmissible under section 212(a)(9)(C) of the Act. Nevertheless, upon her departure, the applicant will be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), and thus needs 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)(C)(iii).

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.
- (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.

The record reflects that the applicant was ordered deported from the United States in September 1995. The applicant's deportation order will, therefore, render her inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon her departure from the United States, and she will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding her ineligibility for adjustment of status. *See Instructions for Form I-212.* The approval of Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g), (h),(i), or 212(a)(9)(B)(v) is needed.<sup>1</sup> *See Instructions for Form I-212, Appendix I.*

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<sup>1</sup> It is also noted that this applicant, upon departure from the United States, will have accrued over a year of unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until the date of the applicant's departure. As such, the applicant will be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). In order to seek a waiver of inadmissibility, the applicant will be required to

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In the instant case, the applicant submits documentation establishing her ties to the United States, including the presence of her lawful permanent resident mother and three U.S. citizen children, born in 1992, 1996 and 1998, and the fact that the applicant has been residing in the United States for over nineteen years. Letters from the applicant's mother and children outlining the hardships they would face were the applicant to relocate abroad have also been submitted. In addition, a letter has been provided establishing the applicant's gainful employment, since 1999, earning \$11.00 an hour as a Production Packer. *See Letter from [REDACTED]* dated May 7, 2010. Moreover, evidence has been provided establishing extensive community ties to the United States as a result of having resided in the United States since 1992.

Finally, a statement has been provided from the applicant. In said statement, the applicant explains that she is a single mother and the sole provider for her three U.S. citizen children. Were she to relocate abroad, the applicant asserts that her 57-year old mother would not be able to care for the children on her own. Alternatively, were her children to relocate to El Salvador, the applicant contends that they would suffer due to unfamiliarity with the country as they have never been there before and moreover, they would be in danger due to the high incidents of crime and violence in the country. *See Form I-290B*, dated July 21, 2011. The AAO notes that the U.S. Government continues to grant El Salvadorans living in the United States Temporary Protected Status (TPS), thus confirming the difficult conditions in El Salvador.

The favorable factors in this matter are the hardships the applicant's lawful permanent resident mother and U.S. citizen children would face if the applicant were to relocate to El Salvador, regardless of whether they accompanied the applicant or remained in the United States, the approval of the Petition for Alien Relative (Form I-130) filed on behalf of the applicant in May 2002, the applicant's long-term gainful employment in the United States, the apparent lack of a criminal record, her community ties, and the passage of more than sixteen years since the applicant was ordered removed. The unfavorable factors in this matter are the applicant's entry without inspection in 1992, the deportation order issued in 1995, the failure to depart pursuant to the voluntary departure order, and periods of unauthorized presence and employment in the United States.

The applicant's violations of immigration law cannot be condoned, but it is noted that the applicant has been residing in the United States for almost two decades. The applicant has a lawful permanent

resident mother and three U.S. citizen children who have never lived in El Salvador. The record indicates that the applicant has been gainfully employed for over a decade with the same employer.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the applicant's Form I-212 appeal will be granted.

**ORDER:** The applicant's Form I-212 appeal is granted and the application is approved, with approval conditioned on the applicant's departure from the United States.