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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 16 2012

Office: LOS ANGELES

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:



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,

for

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States without authorization in or around 1985. See *Form I-601, Application for Waiver of Ground of Excludability (Form I-601)* and *Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485)*. On January 30, 1998, the applicant filed the Form I-485 based on an approved Form I-130, Petition for Alien Relative, submitted on behalf of the applicant by her lawful permanent resident spouse. In June 1999, the applicant departed the United States to visit her ill father. On August 2, 1999, the applicant attempted to procure entry to the United States by presenting a fraudulent Resident Alien Card (Form I-551). See *Form I-213, Record of Deportable/Inadmissible Alien*, dated August 2, 1999. The applicant was expeditiously removed. On August 4, 1999, the applicant's Form I-485 was terminated as a result of her departure without advance parole. The applicant subsequently obtained Humanitarian Parole on August 4, 1999 and re-entered the United States, with permission to remain until September 3, 1999. The record indicates that the applicant has not departed the United States since her last entry in August 1999.

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) because subsequent to her removal in August 1999, the field office director determined that she had illegally returned to the United States on or about August 4, 1999. 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 was outside the United States and was seeking readmission to the United States at least 10 years after the date of her last departure. The applicant's Form I-212 was denied accordingly. *Decision of the Field Office Director*, dated June 30, 2009.

In support of the appeal, counsel for the applicant submits a brief. 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 removed from the United States in August 1999, the record does not establish that subsequent to her removal, the applicant entered or attempted to enter the United States without being admitted. Rather, as noted above, subsequent to her removal the applicant re-entered the United States with Humanitarian Parole. See *I-94 Card*, dated August 4, 1999. As such, the applicant is not inadmissible under section 212(a)(9)(C) of the Act. Nevertheless, the applicant remains inadmissible to the United States under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) 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.

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 spouse and two U.S. citizen children, born in 1999 and 2000. In addition, a letter has been provided establishing the applicant's gainful employment, since 2001 as a garment presser. See *W-2, Wage and Tax Statement for 2008* and *Letter from* [REDACTED] dated August 18, 2006. Moreover, evidence has

been provided establishing extensive community ties to the United States as a result of having resided in the United States since the mid-1980s.

Finally, a declaration has been provided from the applicant's spouse. In his declaration, the applicant's spouse explains that he married the applicant in 1992, she is his best friend and companion, and were she to relocate abroad, he and his children would suffer. In addition, the applicant's spouse asserts that his children are doing well academically and socially in large part due to their mother's presence and involvement, and were she to relocate abroad, the entire family would experience hardship. The applicant's spouse further references that his two daughters have never been separated from their mother and he would not be able to raise them by himself. Finally, the applicant's spouse notes that he and his wife work so that they may be able to provide for the family but without her financial contributions, the family will experience hardship. *Declaration of* [REDACTED] dated September 1, 2006.

The favorable factors in this matter are the hardships the applicant's lawful permanent resident spouse and U.S. citizen children would face if the applicant were to relocate to Mexico, 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 September 1992, the applicant's long-term gainful employment in the United States, the apparent lack of a criminal record, her community ties, church membership, the payment of taxes and the passage of more than twelve years since the applicant's attempted entry to the United States by fraud or misrepresentation and her subsequent removal. The unfavorable factors in this matter are the applicant's entry without inspection in the mid-1980's, the applicant's attempted entry by fraud or willful misrepresentation in 1999, the applicant's removal from the United States in 1999 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 over two decades. The applicant has a lawful permanent resident spouse who she married almost twenty years ago and two U.S. citizen children. 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 sustained and the application is approved.