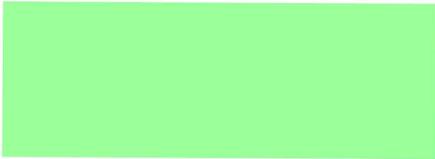


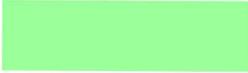


**U.S. Citizenship  
and Immigration  
Services**

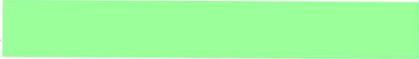
(b)(6)



DATE: **FEB 04 2013** Office: SPOKANE, WA



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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Spokane, Washington, 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 sustained.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without inspection within 10 years of having been removed pursuant to a section 235(b)(1) proceeding. The applicant is 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). She seeks permission, *nunc pro tunc*, 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 escape her abusive former spouse in Mexico and reside in the United States with her two young sons.

The field office director concluded that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(II) and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated February 9, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was incorrect as a matter of law, asserting that the applicant's Form I-212 was improperly denied. *Form I-290B*, received March 13, 2012.

In support of these assertions, the record contains, but is not limited to: counsel's brief in support of the appeal; statements from the applicant, her mother and her sister; court records related to the applicant's divorce from her former spouse; copies of court records related to abuse suffered by the applicant at the hands of her former spouse; a copy of the approval notice for the applicant's Form I-360; and country conditions materials discussing the lack of domestic violence protections in Mexico. The entire record was reviewed and considered in rendering this decision on the appeal.

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 indicates that the applicant attempted to enter the United States on May 26, 2002, but was detained and removed in an expedited proceeding pursuant to section 235(b)(1) of the Act. The applicant then re-entered the United States the next day without inspection. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The applicant is the recipient of an approved Form I-360, Petition for Amerasian, Widow or Special Immigrant. The record establishes that the applicant fled Mexico with her two sons after being abandoned by an abusive former spouse. Her former spouse had been routinely entering the United States to find employment, and had filed a Form I-130, Petition for Alien Relative, on her behalf which was subsequently approved. The applicant's former spouse then ceased contact with her for extended periods, informed her that he was residing with another individual in the United States, would not support her or her two children and would not file an application for adjustment in the United States on her behalf. After the applicant entered the United States and re-united with her two young sons, she found employment and entered her children into the public school system in Spokane, Washington. In 2003, after having resided in the United States for roughly one year, the applicant's former spouse broke into her house and assaulted her physically and sexually. Her former spouse was convicted of burglary and an assault charge related to this incident, and was deported to Mexico. The applicant's former spouse has threatened to harm or kill her or her children if they return to Mexico.

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 Application for Permission to Reapply After Deportation:

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.

*Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The record does not contain any evidence that the applicant has violated any other laws during her residence in the United States, and the AAO finds no basis to question the moral character of the applicant. *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978).

The factors weighing in favor of granting the applicant permission to reapply for admission to the United States include the fact that she has an approved Form I-360 petition as a VAWA self-petitioner, the fact that she and her two young sons have established significant ties to their community in Spokane, Washington, and, most importantly, the fact that the applicant remains under threat of death or serious harm if she returns to Mexico. The AAO finds that these factors outweigh the fact that the applicant entered the United States within 10 years of having been removed pursuant to a section 235(b)(1) proceeding. As such, the AAO concludes that a favorable exercise of discretion is warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she 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 appeal will be sustained.

**ORDER:** The appeal is sustained.