



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

(b)(6)

[REDACTED]

Date: JUN 24 2013

Office: LOS ANGELES, CA [REDACTED]

IN RE: [REDACTED]

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:
[REDACTED]

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 District Director, Los Angeles, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the application will be approved.

The record establishes that the applicant is a native and citizen of Mexico who attempted to procure entry to the United States in December 1999 by presenting a fraudulent border crossing card. On December 13, 1999, the applicant was expeditiously removed from the United States. Shortly thereafter, the applicant entered the United States without being admitted and has remained in the United States to date. The applicant is inadmissible under sections 212(a)(9)(A)(i) and 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§1182 (a)(9)(A)(i) and 1182(a)(9)(C)(i)(II). In September 2002, the applicant sought permission to reapply for admission into the United States under 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 U.S. citizen spouse and children.

The district director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The district director denied the Form I-212 accordingly. *See District Director's Decision*, dated August 10, 2006.

On appeal, the AAO concurred with the district director that the applicant did not meet the requirements for consent to reapply because ten years had not elapsed. The appeal was dismissed accordingly. *Decision of the AAO*, dated September 17, 2009. After the Form I-212 was denied, the applicant submitted an I-360 Petition for Amerasian, Widow or Special Immigrant as a self-petitioning battered spouse of a United States citizen under the Violence Against Women Act, which was approved in December 2010. The applicant sought a waiver of inadmissibility under §212(a)(9)(C)(iii) of the Act, contending that her attempted reentry to the United States in 1999, which led to her removal, and her subsequent re-entry to the United States without authorization shortly thereafter, were connected to the abuse she suffered at the hands of her spouse.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain alien 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 5 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 Attorney General [now, Secretary, Department of Homeland Security] 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 of Homeland Security has consented to the alien's reapplying for admission.

In a separate decision, the AAO determined that the applicant had established a connection between her subjection to battering or extreme cruelty and her attempted entry to the United States in 1999, which led to her removal, and the applicant's subsequent entry to the United States without being admitted. The appeal of the denial of the Form I-601, Application for Waiver of Grounds of Inadmissibility, was sustained, and her Form I-601 was approved. Nevertheless, the applicant remains inadmissible under §212(a)(9)(A) of the Act, based on her removal from the United States, and must request permission to reapply for admission. As the AAO has found the applicant eligible for a waiver of inadmissibility, it will withdraw the district director's decision on the Form I-212 and render a new decision.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In proceedings for permission to reapply for admission, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the applications approved.

ORDER: The applicant's Form I-212 appeal is sustained and the application is approved.