



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

(b)(6)

[Redacted]

DATE: **JUN 24 2013**

Office: SAN ANTONIO, TX

[Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission Into the United States after Deportation or Removal under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(ii)

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.

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 in accordance with the instructions on 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) was denied by the Field Office Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Venezuela who departed the United States on October 10, 1997, after being personally served on July 30, 1997 with a Notice to Appear, rather than appear for removal proceedings. On November 20, 1997, the Immigration Judge issued an in absentia removal order against the applicant. The applicant was found to be inadmissible to the United States under 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 reentered the United States without admission after having been ordered removed. The applicant contests this finding of inadmissibility, contending that she procured admission to the United States by presenting a passport and visa belonging to her cousin, and seeks permission to reapply for admission in order to reside in the United States with her U.S. citizen husband.

The field office director concluded the applicant had failed to show that she had been admitted or inspected, was therefore inadmissible under section 212(a)(9)(C)(i)(II), and, accordingly, denied the Form I-212. *Decision of Field Office Director, August 27, 2010.*

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant had not established having entered the United States using fraudulent documents and thus failed to address the substantial equities that would have warranted a favorable exercise of discretion.

In support of the appeal, counsel submits a brief and documentation including updated hardship statements, a copy of an airline ticket, and documentation concerning her parents' asylee status. The record on appeal includes the documentation submitted in support of the original request for permission to reapply for admission. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(A) provides, pertinent part:

(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 ... 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 ... 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.

The applicant states she departed the United States on October 10, 1997 after being issued a Notice to Appear, and on November 20, 1997 the Immigration Judge ordered her removed in absentia.

Section 212(a)(9)(C) of the Act provides, in pertinent part:

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.

Besides showing that a removal order against the applicant was issued on November 20, 1997, the record also reflects that she reentered the country. The applicant states she departed the United States on October 10, 1997, reentered the United States illegally in September 1998, and remained here until departing in November 2000, and that she again reentered illegally about a week later and has remained here since that time. The applicant maintains she reentered the United States on two occasions as an impostor using the passport and visa of a relative, but the field office director found that she had provided insufficient evidence of having entered the United States upon inspection and admission. He, therefore, concluded her reentry without inspection or parole made her inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

The applicant bears the burden of proving admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. Claiming to have lost the passport she used for both entries, the applicant provides only an airline ticket for travel to the United States in November 2000 in the name of the relative whose passport she purportedly used. This evidence is insufficient to prove inspection and admission of the applicant, as it fails to establish that the applicant – rather than the true owner of the passport – used the ticket, and does not without other corroborating documentation show that she procured admission by fraud rather than making an entry without inspection. The AAO further notes that on her Form I-485, Application to Adjust Status, submitted on August 8, 2008, and on her Form I-485 submitted on November 14, 2009, the applicant indicated that her last entry to the United States was on September 2, 1998. Both applications include an addendum to Part 3, Question 10 stating, “On September 2, 1998 Applicant entered the United States with a visa belonging to someone else, under the name of [REDACTED].” There is no mention of a November 2000 entry and no explanation on appeal of why the applicant previously stated her last entry was in September 1998 rather than November 2000.

Counsel for the applicant contends that USCIS erred in failing to issue a Notice of Intent to Deny (NOID) or Request for Evidence (RFE) giving the applicant the chance to provide evidence she was inspected or admitted before it denied the waiver in 2010. However, counsel has failed to provide such evidence on appeal. Nor does counsel state that the missing passport was, in fact, still available to the applicant between her November 2009 waiver application and its denial in August 2010. Further, we observe that, unless the applicant produces conclusive evidence of admission, the fact that she is present in the United States supports the field office director’s finding that she entered without inspection and is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) may not apply for consent to reapply 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 10 years ago, the applicant has remained outside the United States, *and* USCIS has consented to the applicant’s reapplying for admission. In the present matter, the applicant is still present in the United States, and she must depart and remain outside the United States for 10 years before she is eligible for permission to reapply. She is currently statutorily ineligible to apply for permission to reapply for admission.

In proceedings for application for a visa or any other document required for entry, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal of the field office director’s denial of the Form I-212 will be dismissed.

**ORDER:** The appeal is dismissed.