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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**

Date: **MAY 15 2013**

Office: SAN JOSE, CA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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.

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. 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 Jose, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(C)(i)(II) of the Act for being unlawfully present after previously being removed from the United States. The applicant is married to a U.S. citizen and seeks permission to reenter the United States after her removal in order to reside with her husband and child in the United States.

The field office director found that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and does not meet the requirements for consent to reapply because she is currently living in the United States. The field office director denied the application accordingly.

On appeal, counsel contends that the applicant is eligible to adjust her status because her reentry into the United States pre-dates the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). In addition, counsel contends the applicant relied on the Court of Appeals for the Ninth Circuit's decision in *Perez-Gonzalez*, 379 F.3d 783 (9th Cir. 2004). Counsel alternatively argues that more than ten years have elapsed since the applicant's 1995 exclusion order and that she may apply for consent to reapply for admission even though she has been residing in the United States.

The AAO finds counsel's contention that the applicant is not inadmissible because her reentry pre-dated IIRIRA to be persuasive. The record shows, and the applicant does not contest, that she attempted to enter the United States by using a fraudulent U.S. birth certificate on October 7, 1995. The applicant was detained, ordered removed by an immigration judge, and was removed from the United States on October 13, 1995. The record further shows, and counsel concedes, that the applicant entered the United States without inspection the next day, on October 14, 1995, and has since remained in the United States. Therefore, the applicant's reentry into the United States pre-dated IIRIRA. Because "the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997," the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act. See *U.S. Department of Justice, Office of Programs (HQPGM), Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)*, dated June 17, 1997, at 6.

Nonetheless, because the applicant was previously removed from the United States, she is inadmissible under section 212(a)(9)(A) as an alien previously removed and, as such, requires permission to reenter the United States. In a separate decision, the field office director denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601), which the applicant filed in relation to her inadmissibility under section 212(a)(6)(C)(i) of the Act for willful

misrepresentation of a material fact in order to procure an immigration benefit. The AAO has dismissed the applicant's appeal of that decision.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and that no purpose would be served in granting the application. In this case, the applicant is subject to the provisions of section 212(a)(6)(C)(i) of the Act and was denied a waiver under section 212(i) of the Act. The AAO has denied the applicant's appeal of that decision. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States. Therefore, the Form I-212 was properly denied by the field office director.

In proceedings for an application for admission, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.