



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: OCT 08 2013

Office: BALTIMORE

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)(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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Baltimore, Maryland, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(A)(i) of the Act for seeking admission within five years of being removed pursuant to section 235(b)(1) of the Act. She seeks 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)(A)(iii), in order to reside in the United States with her U.S. citizen spouse and daughter and her lawful permanent resident son.

The District Director determined that the applicant had failed to demonstrate that the favorable factors in her case outweighed the adverse factors and denied the application accordingly. *See Decision of District Director*, dated May 18, 2006. The District Director also noted that the applicant's reentry could subject her to reinstatement of a prior removal order under section 241 of the Act.<sup>1</sup>

On appeal, filed on June 27, 2006 and received by the AAO on June 20, 2013, counsel for the applicant contends that the District Director failed to consider certain favorable factors in the applicant's case. *Counsel's Brief*.

The record contains, but is not limited to: statements from the applicant; letters of support from friends; a letter from the pastor at the applicant's church; a photograph of the applicant and her family; tax returns and financial records; and evidence that the applicant has no criminal history.

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-

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<sup>1</sup> The record does not reflect that a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) reinstating the applicant's removal order has been served on the applicant.

- (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 AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act. The record reflects that the applicant attempted to enter the United States without inspection on July 27, 1997. She was detained at the [REDACTED] California port of entry and was removed to Mexico on July 31, 1997 pursuant to section 235(b)(1) of the Act. At that time, she was notified that she was inadmissible to the United States for a period of five years. *See Form I-296*, dated July 31, 1997. Because more than five years have passed since the applicant's removal on July 31, 1997, the applicant is not inadmissible under section 212(a)(9)(A)(i) of the Act.

However, we find that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(9)(C)(i)(I), as discussed below.

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

(C) Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General

Any alien who—

...

(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.

An alien who is inadmissible under section 212(a)(9)(C) of the Act 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, 874-75 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007); *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.

The record establishes that the applicant was removed from the United States on July 31, 1997 pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). *See Form I-296, Notice to Alien Ordered Removed/Departure Verification; Form I-860, Notice and Order of Expedited Removal.* By her own admission, the applicant later reentered the United States without inspection<sup>2</sup> and has remained in the United States since that date.<sup>3</sup> Accordingly, she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and is currently statutorily ineligible to seek permission to reapply for admission because she has not remained outside the United States for ten years since her last departure.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The exact date of the applicant's unlawful reentry is unclear from the record, but it appears to have occurred between late 1997 and 1999. On a Form I-485 the applicant submitted in 2001, she indicated that she had last arrived in the United States in 1998. On a Form G-325A she completed on January 13, 1998, she indicated that she had been living in Maryland since September 1997. In an affidavit dated June 16, 2006, the applicant stated that she had lived at the same address in Maryland for seven years. In his denial of the Form I-212, the District Director found that the applicant had reentered in 1998 and the applicant has not contested that finding.

<sup>3</sup> The applicant appears to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. She may require a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.