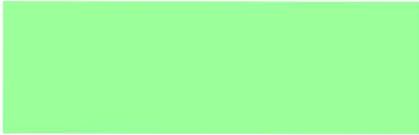




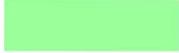
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **SEP 18 2013**

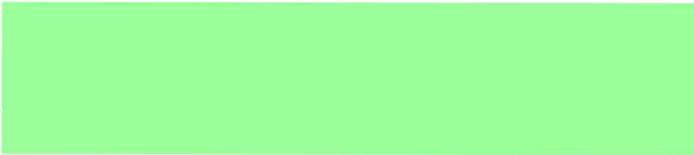
Office: NEW YORK

FILE: 

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) 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 (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.

Thank you,

f3-  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The record indicates that the applicant is a native and citizen of Mexico who entered the United States without inspection in 1990. On October 9, 1992, the applicant appeared before an immigration judge, and the applicant was granted voluntary departure on or before February 22, 1993. The record indicates that the applicant complied with this order, departing in November 1992, and subsequently reentered the United States without inspection in May 1997. On September 30, 2009, the applicant filed Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), in order to reside in the United States with her U.S. citizen spouse.

The District Director determined that the applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), and had not been outside the United States for ten years after her last departure in November 1992.<sup>1</sup> The District Director denied the Form I-212 accordingly. See *Decision of the District Director*, dated November 30, 2009.

On appeal, filed on December 30, 2009 and received by the AAO on June 12, 2013, counsel contends that the District Director erred in denying the applicant's Form I-212 as more than ten years have passed since the applicant was granted voluntary departure, and that the applicant was a minor at the time she accrued unlawful presence in the United States between 1990 and November 1992.

As noted above, the District Director found that the applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

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...and who enters or attempts to reenter the United States without being admitted is inadmissible.

The provisions of section 212(a)(9)(C) of the Act were enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and only periods of unlawful presence spent in the United States after the April 1, 1997 effective date of IIRIRA count towards unlawful presence for

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<sup>1</sup> The applicant submitted evidence, including an affidavit from the applicant's father, stating that she departed the United States in November 1992. The record further includes a copy of a medical certificate from Mexico indicating that the applicant received orthodontics treatment in Mexico from December 20, 1992 to May 1994. In addition, the record includes a copy of the birth certificate of the applicant's eldest child, born on October 29, 1992 in [REDACTED] New York, and a baptismal certificate for the same child, indicating that the child was baptized in Mexico on January 29, 1993.

purposes of section 212(a)(9)(C)(i)(I) of the Act. *See Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* (May 6, 2009).

As the applicant accrued unlawful presence in the United States between 1990 and 1992, a period before April 1, 1997, the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

As the record shows that the applicant did not accrue unlawful presence before April 1, 1997, she is not inadmissible under section 212(a)(9)(C) of the Act. She is therefore not required to file a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, pursuant to section 212(a)(9)(C)(ii) of the Act.<sup>2</sup> Therefore, the appeal of the denial of the Form I-212 will be dismissed as unnecessary.

**ORDER:** The appeal is dismissed as unnecessary.

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<sup>2</sup> The record indicates that on or about August 31, 1995, the applicant attempted to enter the United States at or near Nogales, Arizona, and falsely claimed to be a citizen of the United States. As this claim occurred before September 30, 1996, it does not render her inadmissible under section 212(a)(6)(C)(ii) of the Act. She does appear to be inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by fraud or willfully misrepresenting a material fact, for which she requires a waiver of inadmissibility under Section 212(i) of the Act.