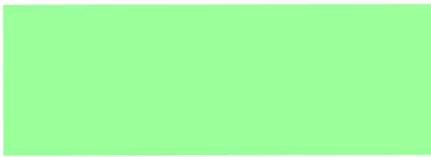


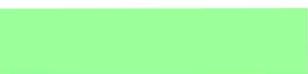


**U.S. Citizenship
and Immigration
Services**

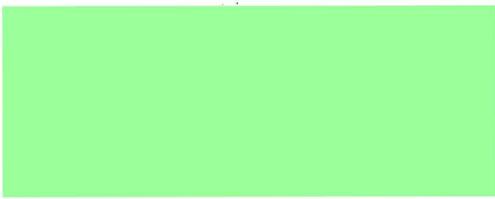
(b)(6)



Date: **APR 16 2014** Office: SAN BERNARDINO FIELD OFFICE 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)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii).

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 Application for Permission to Reapply for Admission into the United States After Removal was denied by the Field Office Director, San Bernardino, California, and 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 subject to expedited removal from the United States on August 10, 2001. The applicant subsequently re-entered the United States. The field office director found the applicant to be inadmissible under sections 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), as a result of the applicant's removal and subsequent entry to the United States without being admitted. The applicant now seeks 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.

The field office director concluded that the applicant did not meet the requirements for consent to reapply because she has not left the United States, is not currently residing abroad, and 10 years have not elapsed since the date of her last departure. The applicant's Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) was denied accordingly. *Decision of the Field Office Director*, dated July 18, 2013.

On appeal counsel for the applicant contends that the applicant does not need to apply for consent to reapply because she has been lawfully admitted to the United States. In support of the appeal, counsel submits a brief and a photocopy of the applicant's passport. The entire record was reviewed and considered in rendering this decision.

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.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' 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 has consented to the alien's reapplying for admission.

The field office director determined that an entry stamp the applicant presented with an I-485, Application to Adjust Status was fraudulent, that a search of USCIS records did not support the applicant had entered the United States lawfully, and that she had thus not made a lawful entry to the United States. The record reflects that the applicant was subject to expedited removal from the United States on August 10, 2001. During a sworn statement at that time the applicant admitted having purchased a document in an effort to the enter the United States. See form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The applicant was removed on August 10, 2001. See Form I-296, Notice to Alien Ordered Removed/Departure Verification. With her Application to Adjust Status the applicant submitted a copy of a passport page with a nonimmigrant visa and an admission stamp dated December 23, 2005.

On appeal counsel contends that the applicant did not re-enter the United States without authorization as the field office director determined in her decision, that applicant's admission stamp is not fraudulent, and that as she was present in the United States lawfully when she filed her application for adjustment of status she does not need to apply for consent to reapply. Counsel contends that USCIS has not proven "beyond a reasonable doubt" that the applicant's admission stamp was fraudulent, but he has not submitted evidence to overcome the finding of the field office director. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). It is noted that the applicant possessed a visa determined to be fraudulent when she was removed from the United States in August 2001 and a search of immigration records indicates she was not inspected and admitted on December 23, 2005, as claimed by counsel. Further, the applicant submitted a copy of a nonimmigrant visa purportedly issued to her on April 10, 1999, claiming that she was admitted on December 23, 2005 with this visa. A search of government records indicates that the applicant was never issued a nonimmigrant visa

by the U.S. Consulate in Tijuana, and it appears that this document is fraudulent. It is further noted that the applicant gave birth to a daughter in the United States on September 30, 2001, a little more than one month after her August 2001 removal. There is no indication and she makes no claim that she was inspected and admitted when she entered the United States in 2001. As she reentered the United States without inspection after her August 2001 removal, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The record establishes that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) as a result of her removal and subsequent entry to the United States without being admitted. An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission 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).

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 into the United States. In the present matter, as the applicant is currently residing in the United States she is statutorily ineligible to apply for permission to reapply for admission.

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