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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: DEC 11 2014

Office: LOS ANGELES

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)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and an appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the previous decision of the AAO is affirmed.

The record reflects that the applicant is a native and citizen of Mexico who was expeditiously removed from the United States on two separate occasions in May 2000 and subsequently reentered the United States without being admitted. The applicant was found to be inadmissible to the United States pursuant to 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). The applicant seeks permission to reapply for admission to the United States in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director determined that the positive factors in the applicant's case did not overcome the negative factors. The Form I-212 was denied accordingly. *See Decision of Field Office Director*, dated December 6, 2008.

On appeal, this office determined that the applicant was statutorily ineligible to obtain consent to reapply for admission to the United States as the applicant had not been outside of the United States for a total of ten years since her most recent expedited removal. The appeal was dismissed. *See Decision of the AAO*, dated April 10, 2012.

On motion, the applicant contends she is eligible for permission to reapply for admission based on her reliance on *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004).

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-

(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) 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 (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 record reflects that on May 13, 2000, the applicant attempted to procure entry to the United States with false documentation. On May 14, 2000, she was expeditiously removed from the United States for a period of five years. On May 16, 2000, the applicant was again expeditiously removed from the United States for a period of twenty years as a result of attempting to procure entry to the United States with false documents on May 15, 2000. The applicant subsequently entered the United States without inspection sometime between May 16, 2000 and April 6, 2001, when she married her spouse in [REDACTED] California. The applicant is therefore inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(C)(iii) of the Act.

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 ten 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); *see also 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, the Board of Immigration Appeals (BIA) has held that it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States and USCIS has consented to the applicant's reapplying for admission.

Aliens who reside within the jurisdiction of the Ninth Circuit Court of Appeals, however, may be eligible for consent to reapply for admission even if they are presently inadmissible under section 212(a)(9)(C)(i)(II) of the Act, if they meet specific requirements under the terms of *Duran-Gonzales v. DHS*, No. C06-1411(W.D. Wash., 2014). Settlement Agreement and Amendment of the Class Definition at 2-3, *Duran Gonzales v. DHS*, No. C06-1411 (W.D. Wash., 2014)(settlement agreement).

The settlement agreement defines a class member as any person who:

1. Is the beneficiary or derivative beneficiary of an immigrant visa petition or labor certification filed on or before April 30, 2001, provided that, if the immigrant visa petition or labor certification was filed after January 14, 1998:
 - a. the beneficiary was physically present in the United States on December 21, 2000, or
 - b. If a derivative beneficiary, the derivative beneficiary or the primary beneficiary was physically present in the United States on December 21, 2000.
2. Is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (“INA”), because he or she entered or attempted to reenter the United States without being admitted after April 1, 1997, and without permission after having previously been removed;
3. Properly filed a Form I-485 (Application to Adjust Status) and Form I-485 Supplement A (Adjustment of Status Under Section 245(i)) while residing within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on or before November 30, 2007;
4. Filed a Form I-212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal) on or after August 13, 2004, and on or before November 30, 2007;
5. Form I-485, Form I-485 Supplement A, and Form I-212 were denied by U.S. Citizenship and Immigration Services (“USCIS”) and/or the Executive Office for Immigration Review (“EOIR”) on or after August 13, 2004, or have not yet been adjudicated;
6. Is not currently subject to pending removal proceedings under INA § 240, or before the United States Court of Appeals for the Ninth Circuit on a petition for review of a removal order resulting from proceedings under INA § 240; and
7. Did not enter or attempt to reenter the United States without being admitted after November 30, 2007.

In this case, the record establishes that the applicant is not eligible for relief under the settlement agreement as the record establishes that she is otherwise inadmissible. In a May 16, 2000 sworn statement, the applicant admitted that she had resided in the United States for over 10 years without authorization prior to attempting to enter the United States with false documentation on two separate occasions in May 2000. The Form I-485 and Form I-601 completed by the applicant also indicate that she entered the United States in August 1990, almost a decade prior to her first expedited removal on May 14, 2000. The record indicates that the applicant subsequently entered the United States without inspection sometime between May 16, 2000 and April 6, 2001, as noted above. The applicant is thus also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act, for illegally reentering the United States after having accrued more than one year of unlawful presence. The settlement agreement only pertains to applicants who are inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Based on her inadmissibility under

section 212(a)(9)(C)(i)(I) of the Act she is still subject to the ten year bar in applying for permission to reapply for admission.

As the record does not establish that the applicant has been outside of the United States for a total of ten years since her most recent expedited removal in May 2000, she is currently statutorily ineligible to apply for permission to reapply for admission into the United States after deportation or removal pursuant to section 212(a)(9)(C)(iii) of the Act.¹ See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); see also *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Her application for permission to reapply for admission pursuant to her inadmissibility under section 212(a)(9)(C)(i)(II) is, therefore, denied as a matter of discretion.

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. Accordingly, the motion will be granted and the previous decision of this office is affirmed.

ORDER: The motion is granted and the previous decision of the AAO is affirmed.

¹ The record establishes that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure immigration benefits by fraud or willful misrepresentation, and 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, as discussed in detail above. The applicant will need to obtain approval of the Form I-601, Application for Waiver of Grounds of Inadmissibility. The applicant has filed a motion to reconsider her Form I-601 denial with this office. This office's decision on the applicant's motion to reconsider her Form I-601 denial is being provided to the applicant under separate cover.