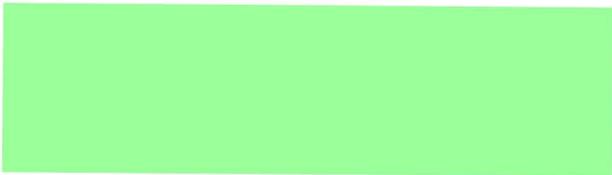


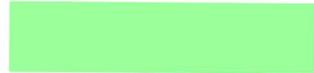


U.S. Citizenship
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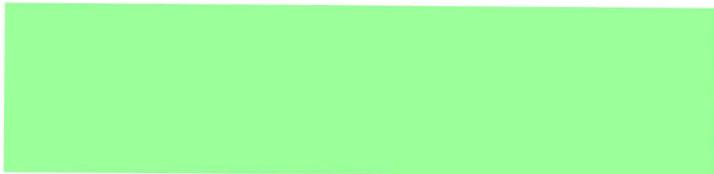
DATE: **JAN 08 2014** OFFICE: HARLINGEN



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)(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,

for 

Ron Rosenberg
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 Harlingen, Texas, Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who attempted to enter the United States on March 9, 2009 from Mexico by using B1/B2 laser visa and was expeditiously removed the same day to Mexico. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her daughter.

The field office director found the applicant to be inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), by virtue of her removal. The applicant 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 enter the country as a permanent resident to live with her daughter. Determining that the factors unfavorable to the applicant outweighed those favorable to her, the field office director found an approval of the Form I-212 was not warranted and, accordingly, denied the application. See *Decision of Field Office Director*, May 29, 2013

On appeal, counsel contends that consent to reapply should be granted because the applicant was never convicted of engaging in prostitution and thus is not inadmissible or, alternatively, because the favorable factors outweigh the adverse factors. In support of the appeal, counsel submits a brief and the petitioner's statement. The record contains records of the applicant's interactions with immigration authorities, including documentation of her attempt to gain admission and of her consequent expedited removal. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(A) provides, pertinent part:

(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 ...) 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 Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

It is uncontested that the applicant was denied admission to the United States on March 9, 2009, and removed expeditiously that same day, after admitting to having engaged in prostitution here during the previous five months. The record reflects that, during this period, the applicant entered the United States approximately twice a month to earn money from prostitution and that she used the proceeds of this activity to purchase clothes for resale. She was thus removed for being an intending immigrant, and notified of having been found to have engaged in prostitution. See *Notice and Order of Expedited Removal (Form I-860)*, March 9, 2009. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act until March 9, 2014.

The record further reflects that the only evidence submitted to support counsel's contention that the applicant deserves permission to reapply for admission is a statement of the applicant's daughter, the Form I-130 petitioner. The daughter states that her mother was removed five years ago and that she fears for her mother's safety due to violence in the Mexican city where the applicant lives. The evidence is insufficient to show that the favorable factors outweigh the unfavorable ones to warrant a positive exercise of the Secretary's discretion.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

Applying the *Tin* factors, we conclude that the applicant has failed to demonstrate she deserves a favorable exercise of the Secretary's discretion.

The record establishes the applicant was removed for being an intending immigrant and for practicing prostitution;¹ removal occurred less than five years ago; the applicant has never been a lawful U.S. resident; she had been visiting the United States twice monthly for five months to engage in sex for money, prior to her removal; and she used the proceeds from prostitution to finance a business involving buying and selling clothing. There is no documentation to support counsel's assertion that she has been rehabilitated or that her daughter is suffering hardship due to her mother's immigration problems. There is no evidence that the applicant has been affected by violence while living in the town where she was born and raised. Consequently, the factors weighing against granting the applicant permission to reapply for admission exceed those that would justify a favorable exercise of discretion.

¹ The AAO notes that inadmissibility under section 212(a)(2)(D) of the Act does not require a criminal conviction, only that the applicant have engaged in prostitution. As the record contains the applicant's sworn statement detailing her illegal activities under this section, she may require an inadmissibility waiver in order to immigrate after expiration of the five-year bar on admission after removal.

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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.