

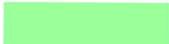
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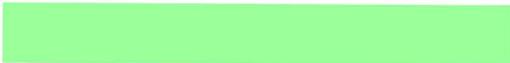


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



Date: **MAR 07 2014** Office: **HARLINGEN, TEXAS**

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

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A). She now 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)(C)(iii) in order to in order to reside in the United States with her U.S. citizen spouse and children.¹

The field office director found that the applicant had failed to establish that she merited favorable consideration. The applicant's Form I-212, 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 15, 2013.

In support of the appeal, the applicant submits the following: affidavit from the applicant and her spouse; birth, academic and medical records pertaining to the applicant's U.S. citizen children; biographic documents pertaining to the applicant and her spouse; employment verification documentation pertaining to the applicant's spouse; and financial documents. The entire record was reviewed and considered in rendering this decision.

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-
 - (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

¹ The applicant and her spouse have four children. Three of the children, born in 2005, 2006 and 2009, are U.S. citizens. One of the children, born in 2012, is a Mexican national currently pursuing lawful permanent residence in the United States.

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 establishes that in September 2009, the applicant entered the United States without authorization near Brownsville, Texas and was subsequently detained by agents of the U.S Border Patrol. On November 19, 2009, the applicant was ordered removed to Mexico and was barred from reentry for a period of ten years. The applicant departed the United States on November 20, 2009. The AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii).

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.

In the instant case, the applicant submits documentation establishing her ties to the United States, including the presence of her lawful permanent resident spouse and three young U.S. citizen children. In addition, the applicant's spouse has submitted a declaration. In his declaration, the applicant's spouse explains that he has been on top of everything with respect to his children's needs, but as a result, he has been experiencing difficulties because he also has to keep up with the rent and all the household bills. He maintains that he has had to ask people to help him pick the children up from school, take them to the doctor and cook for them, as it is impossible for him to do all these things and still provide financially for the family. The applicant's spouse further contends that he and his three children are depressed since the applicant is not with them to provide daily care and support. *Affidavit from* [REDACTED] dated July 24, 2013. In a separate declaration, the applicant maintains that she is worried when her husband and children come to visit her in Matamoros on weekends and on vacations due to the security situation. She explains that there are shootings all the time and her family's lives and welfare are in danger. She further asserts that her children are experiencing hardship due to long-term separation from their mother. *See Affidavit from* [REDACTED] dated July 25, 2013. Documentation establishing the applicant's

spouse's gainful employment in the United States has also been submitted. The AAO notes that the U.S. Department of State has issued a travel warning for the State of Tamaulipas, the applicant's current residence, recommending to U.S. citizens that all non-essential travel be deferred. *Travel Warning-Mexico, U.S. Department of State*, dated July 13, 2013.

The favorable factors in this matter are the hardships the applicant's spouse and children would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or remained in the United States; the approval of the Petition for Alien Relative (Form I-130) filed on behalf of the applicant in April 2013; and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's entry without inspection in August 2009 and subsequent voluntary return to Mexico and the applicant's entry without inspection in September 2009 and her removal from the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 been met.

ORDER: The appeal is sustained.