



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **NOV 18 2014** Office: NEBRASKA SERVICE CENTER

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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 the Dominican Republic who was found inadmissible 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). She 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 with details U.S. citizen spouse.

The director determined that the applicant did not meet the requirements for consent to reapply because it had not been ten years since her last departure from the United States and denied the Form I-212. See *Field Office Director's Decision*, dated June 10, 2014.

The applicant appealed his denial to the Administrative Appeals Office.

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) 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 Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty;
and

- (2) the alien's--
- (A) removal;
 - (B) departure from the United States;
 - (C) reentry or reentries into the United States; or
 - (D) attempted reentry into the United States.

The record indicates the applicant attempted to enter the United States on June 29, 2002, by using a fraudulent passport. She was found inadmissible under sections 212 (a)(6)(C)(i) and (7)(A)(i)(I) of the Act, was detained and then removed under section 235(b)(1) of the Act. The applicant then re-entered the United States without inspection through Mexico in 2003 and resided unlawfully until 2008, when she returned to the Dominican Republic. As such, she is inadmissible pursuant to section 212(a)(9)(C) 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 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); *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, 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. In the present matter, the applicant's last departure from the United States occurred in 2008, less than ten years ago. She is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant is not statutorily eligible for consent to reapply under section 212(a)(9)(C)(ii) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.