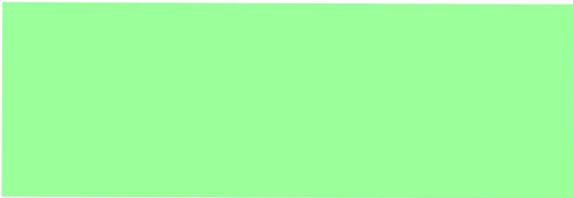




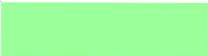
U.S. Citizenship
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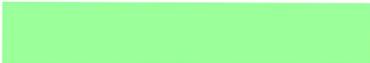
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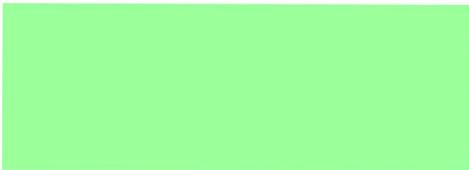
OFFICE: PHILADELPHIA

FILE: 

IN RE: 

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 Field Office Director, Philadelphia, Pennsylvania, 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 Mexico who entered the United States without admission or parole on or about October 4, 2010. On October 11, 2010, a U.S. Customs and Border Patrol (CBP) officer ordered her removed pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), and she was removed the following day. The record indicates that the applicant subsequently reentered the United States without inspection on October 13, 2010 and, thus, is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II). She seeks permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), as the beneficiary of an approved spousal immigrant petition.

The field office director concluded the applicant had failed to show that she had been admitted or inspected and was therefore inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for reentering the United States without admission or parole after being ordered removed. Based on the applicant's last departure from the United States on November 17, 2010, less than 10 years ago, the director determined she was ineligible for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act and, accordingly, denied the Form I-212. *Decision of the Field Office Director*, February 10, 2014.

In support of the appeal, counsel asserts that USCIS has not shown evidence the applicant was subject to an expedited removal order and, further, contends that consular officials indicated to her that she was eligible for permission to reapply for admission. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(C) of the Act provides, in pertinent part:

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 of Homeland Security has consented to the alien's reapplying for admission.

On October 4, 2010, the applicant entered the United States without inspection and she was removed pursuant to section 235(b)(1) of the Act on October 12, 2010. *See Form I-860, Notice and Order of Expedited Removal*, October 11, 2010; *Form I-296, Notice to Alien Ordered Removed/Departure Verified*, October 12, 2010.¹ On October 13, 2010, she reentered the United States without inspection and on October 22, 2010, she was issued a Notice to Appear before an immigration judge. On November 8, 2010, the immigration judge ordered her removed and she was actually removed on November 17, 2010. The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act for reentering the United States without inspection after having been removed under section 235(b)(1) 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); *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), 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 last departed the country approximately four years ago and she must remain outside the United States for ten years before being eligible for permission to reapply. She is currently 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.

¹ The "Verification of Removal" portion of Form I-296 stating that the applicant departed "afoot" is signed by both the applicant and a CBP officer and bears the applicant's fingerprint.