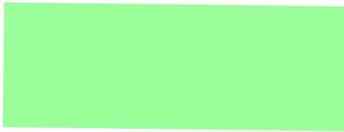




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JAN 21 2015

OFFICE: COLUMBUS

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Columbus, Ohio 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 was found to be 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), for entering the United States without admission or parole after having been ordered removed from the United States. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(iii), 8 U.S.C. § 1182(a)(9)(C)(iii).

The Field Office Director determined that the applicant is subject to section 212(a)(9)(C)(i)(II) of the Act and has not remained outside the United States for ten years following her last departure, and denied the applicant's Form I-212 accordingly. *See Decision of Field Office Director*, dated July 3, 2014.

On appeal, counsel for the applicant asserts that section 813(b) of the Violence Against Women Reauthorization Act of 2005 indicates that for persons covered under VAWA of 1994, U and T visas, and for battered persons, reapplications for admission should be particularly considered for the exercise of authority. As such, counsel contends that the applicant's Form I-212, Application to Register Permanent Residence or Adjust Status, should be granted *nunc pro tunc*. The entire record was reviewed and considered in rendering this decision.

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.

(iii) Waiver- The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The record reflects that the applicant attempted to enter the United States on December 20, 1997 with a photo-altered Mexican passport bearing a nonimmigrant visa. The applicant was ordered removed from the United States on December 21, 1997 and removed on the next day. The applicant subsequently entered the United States without admission or parole on December 24, 1997. Accordingly, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) for entering the United States without admission after an order of removal pursuant to section 235(b)(1) of the Act.<sup>1</sup>

The record reflects that the applicant's Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, as the self-petitioning spouse of an abusive lawful permanent resident, was approved on March 30, 2010. Counsel asserts that section 813(b) of the Violence Against Women Reauthorization Act of 2005 indicates that for persons covered under VAWA of 1994, U and T visas, and for battered persons, reapplications for admission should be particularly considered for the exercise of authority, so the applicant's Form I-212 should be granted *nunc pro tunc*. Counsel cites *Ramirez-Canales v. Mukasey*, 517 F.3d 904 (6th Cir. 2008), in support of his claim. In *Ramirez-Canales*, the Sixth Circuit Court of Appeals considered whether *nunc pro tunc* relief is available for a Form I-485 adjustment of status application. It is noted that the applicant is applying for Form I-212 rather than Form I-485 relief. Further, as acknowledged by counsel, the BIA has determined, in *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), an alien may not obtain a 212(a)(9)(C)(i) waiver, retroactively or prospectively, without regard to the 10-year limitation of 212(a)(9)(C)(ii).

As referenced in the applicant's Form I-212 denial decision, dated July 3, 2014, section 212(a)(9)(C)(iii) of the Act specifically considers VAWA self-petitioner applicants who are inadmissible under section 212(a)(9)(C)(i). Accordingly, inadmissibility under section 212(a)(9)(C)(i) may be waived in the case of a VAWA self-petitioner if there is a connection between the alien's battering or subjection to extreme cruelty and the alien's removal or reentry into the United States. See *INA § 212(a)(9)(C)(iii)*. There is nothing in the record that establishes

<sup>1</sup> The record reflects that the applicant, in addition to her inadmissibility pursuant to section 212(a)(9)(C)(i)(II) of the Act, is also inadmissible under section 212(a)(6)(C)(i), for willfully misrepresenting a material fact in seeking to procure a benefit under the Act on the date and time of her attempted entry to the United States. The applicant did not file a Form I-601, Application for Waiver of Grounds of Inadmissibility.

that the applicant's removal or reentry into the United States in 1997 was connected to her VAWA claim, she is not eligible for a waiver under this section.

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). 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 took place on December 22, 1997, followed by an unlawful entry two days later. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.<sup>2</sup>

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

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<sup>2</sup> It is noted that the Field Office Director's Form I-485 denial decision, dated July 3, 2014, indicates that the applicant's removal order of December 21, 1997 was reinstated on June 30, 2014. It is noted that the record does not contain documentation establishing that the applicant's prior removal order has been reinstated. However, a reinstated removal order would make the applicant ineligible for benefits under the Act. § 241(a)(5).