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

(b)(6)

Date: MAR 3 1 2015 Office: SAN JOSE 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:

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 Deportation or Removal was denied by the Field Office Director, San Jose, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico. On 1997, an immigration judge ordered the applicant removed from the United States and she was thereafter removed on 1997. As a result 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). She 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 remain in the United States and reside with her lawful permanent resident spouse and three U.S. citizen children.

The Field Office Director determined that the applicant's adverse factors outweigh her favorable factors, and she denied the Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212), accordingly. *See Field Office Director's Decision,* dated December 22, 2011.

On appeal, filed January 24, 2012 and received by the AAO on December 3, 2014, the applicant, through her attorney, asserts that she has demonstrated that she has a good moral character and that her immigration violations occurred over 15 years ago.

The record includes, but is not limited to: counsel's appeal brief; financial documentation; affidavits from the applicant's spouse; birth certificates for the applicant's U.S. citizen children; school reports and awards; and property insurance documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> 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 reflects that on , 1997, the applicant presented a Mexican passport containing a U.S. nonimmigrant visa bearing a different name at the California Port of Entry. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. The applicant failed to provide her true identity to immigration officers and was placed into immigration proceedings under another name. She was removed from the United States on 1997, and the record indicates that she last returned to the United States without admission or inspection in March 1997. The applicant is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.[1] The applicant does not contest her inadmissibility.

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 Application for Permission to Reapply After Deportation:

> 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.

The favorable factors supporting the applicant's case include her residence in the United States for 18 years and her good moral character, as reflected in her lack of a criminal record. Despite previous entries without inspection that occurred over 20 years ago, she appears to have become rehabilitated, having developed a respect for the laws of the United States. Her husband, in his statement, indicates that he and the applicant have been married for 13 years and that they share childcare responsibilities. His statement demonstrates that he has a strong relationship with the

[1] The applicant is also inadmissible under section 212(a)(6)(C)(i) for misrepresenting her identity and using a passport that did not belong to her. On September 20, 2007, the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility(Form I-601), to waive this inadmissibility. On September 30, 2009, the applicant's Form I-601 was denied. The record does not indicate that the applicant has appealed the Form I-601 denial decision.

applicant that the applicant has been a "constant source of support" for himself and their U.S. citizen children. In addition, the applicant's spouse describes the hardship that he and their children would experience without the applicant. Finally, the record indicates that over 18 years have passed since she entered without inspection.

The unfavorable factors in this case include the applicant's entries without inspection, her misrepresentation of her identity by using another person's passport, and her re-entering the United States following her removal order in 1997.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of 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.