(b)(6)

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: MAY 14 2015 Office: LOS ANGELES 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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 application was denied by the Field Office Director, Los Angeles, California and an appeal was filed with the Administration Appeals Office (AAO). The AAO subsequently issued a Request for Evidence (RFE). The appeal will now be dismissed.

The record reflects that the applicant is a native and citizen of El Salvador who entered the United States without inspection on or about June 4, 1983. She was ordered deported in absentia on April 29, 1986. The field office director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I). The applicant seeks permission to reapply for admission to the United States in order to reside in the United States.

The field office director determined that the applicant was statutorily ineligible to obtain consent to reapply for admission to the United States as the applicant had not been outside of the United States for a total of ten years since her deportation. The Form I-212 was denied accordingly.

On appeal, filed in September 2009 and received by this office on November 17, 2014, the applicant asserted that she was a person of good moral character. She further contended that her common law spouse is sick and her daughter is disabled.

On January 6, 2015, this office issued an RFE giving the applicant an opportunity to submit additional documentary evidence of positive factors in support of the Form I-212. The applicant was granted 12 weeks from the date of the notice to respond. The RFE stated that if the applicant did not respond within the allotted time period, a decision would be prepared and issued, taking into account all of the evidence of the record. As of today, this office has not received a response from the applicant. The record is thus deemed complete and was reviewed and considered in rendering this decision.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

(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.

(iii) Exception.- Clauses (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 admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

The record establishes that the applicant was ordered deported. However, as we stated in the RFE, the record does not establish that after being ordered deported, the applicant departed the United States and subsequently entered, or attempted to enter, the United States without authorization. As such, the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act.

Nevertheless, as a result of the applicant's order of deportation, she remains inadmissible to the United States pursuant to section 212(a)(9(A) of the Act and needs permission to reapply for admission after deportation or removal.

In *Matter of Tin,* 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in reviewing an application for permission to reapply for admission:

> 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 in this matter are the applicant's family ties to the United States and the applicant's apparent lack of a criminal record. The unfavorable factors are the applicant's entry into the United States without inspection in 1983; the applicant's failure to depart the United States pursuant to the deportation order; and periods of unlawful presence in the United States.

The applicant has not provided sufficient documentation in response to the RFE, on appeal, or with the Form I-212 submission, establishing by supporting evidence that the favorable factors outweigh the unfavorable ones. 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.