

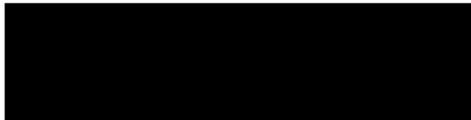
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

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



Hy

Date: JUL 25 2012

Office: SAN FERNANDO FIELD OFFICE

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 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,

fo-

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The San Fernando Field Office Director 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, a native and citizen of Mexico who was ordered to be excluded and deported in October 1996 as a result of failing to have a valid immigrant visa to enter the United States. *See Order of the Immigration Judge*, dated October 16, 1996. 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 now 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 reside in the United States with her lawful permanent resident spouse.

The Field Office Director found that the applicant was ineligible for a grant of the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), pursuant to section 241(a)(5) of the Act and because she was inadmissible under section 212(a)(9)(C)(i)(II) of the Act as an alien who had been ordered removed from the United States and subsequently reentered the United States without being admitted. *Decision of the Field Office Director*, dated January 12, 2010.

The record contains the following documentation: a brief filed by the applicant's attorney; a declaration by the applicant; financial documentation, and letters of reference. 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 the applicant attempted to enter the United States in October 1996 using an altered passport and a fraudulent Form I-551. The applicant was subsequently ordered excluded and deported from the United States on October 16, 1996 and reentered the United States later in October 1996 without inspection.

The AAO notes that the provisions of section 212(a)(9)(C) relating to aliens who have been removed from the United States and subsequently reenter the United States were added to the Act as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and entered into effect on April 1, 1997. Section 212(a)(9)(C)(i)(II) of the Act has been determined to apply to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. *See Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)*, Paul W. Virtue, Acting Executive Associate Commissioner, U.S. Immigration and Naturalization Service, June 17, 1997. The memorandum further states, "The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997." As the applicant reentered the United States prior to that date, the applicant is not inadmissible under this provision of the law. However, the applicant is inadmissible to the United States under section 212(a)(9)(A)(ii) of the Act and requires consent to reapply for readmission after deportation.

As noted above, the Field Office Director also found that the applicant was ineligible for a grant of the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), pursuant to section 241(a)(5) of the Act.

Section 241(a)(5) of the Act provides in pertinent part:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The regulation at 8 C.F.R. § 241.8 states that:

(a) [A]n alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

(1) Whether the alien has been subject to a prior order of removal. . . . (2) The identity of the alien. . . . (3) Whether the alien unlawfully reentered the United States . . . .

(b) [I]f an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) Order. If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

A thorough review of the record reflects that the applicant in the present matter was not given a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) as required by 8 C.F.R 241.8(b).<sup>1</sup> Consequently, the applicant's prior removal order was not reinstated and the applicant is not barred from seeking permission to reapply for admission. Accordingly, the AAO will evaluate whether the applicant merits permission to reapply for admission as a matter of discretion.

The AAO notes that the field office director denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility on January 12, 2010, and the AAO, in a separate decision, dismissed an appeal of field office director's decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act no purpose would be served in granting the applicant's Form I-212.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, it is concluded

---

<sup>1</sup> The AAO notes that Immigration and Customs Enforcement (ICE) is the agency responsible for issuance of the Form I-871.

Page 5

that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed

**ORDER:** The appeal is dismissed.