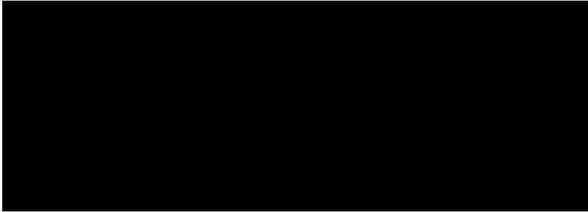


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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: DEC 16 2005

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Mexico who, on November 26, 2000, at the Calexico, California Port of Entry, attempted to procure admission into the United States. The applicant presented a valid Mexican passport containing a fraudulent stamp indicating that permanent residence status had been granted to her. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. Consequently, on November 26, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her Lawful Permanent Resident (LPR) spouse. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 apply for a "V" nonimmigrant visa and travel to the United States to reside with her LPR spouse and children.

The Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. The Director concluded that the applicant is not a person of good moral character and not eligible for any relief or benefit from her application and denied the Form I-212 accordingly. *See Director's Decision* dated November 8, 2004.

The AAO finds that the Director erred in stating that the applicant is not eligible for any relief or benefit from the application. The proceedings in the present case are for permission to reapply for admission into the United States after deportation or removal, and therefore the AAO will not discuss the applicant's potential grounds of inadmissibility under section 212(a)(6)(C) of the Act. However, if the applicant is found inadmissible under section 212(a)(6)(C)(i) of the Act, she is eligible to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i) based on her marriage to an LPR. This ground of inadmissibility in and of itself does not preclude the applicant from applying for permission to reapply for admission. The proceeding in the present case is limited to the issue of whether or not the applicant meets the requirements necessary for the ground of inadmissibility under section 212(a)(9)(A)(i) of the Act, to be waived. In addition, the AAO finds that the Director erred in stating that the applicant was ordered removed from the United States on November 26, 2001. The record of proceedings indicates that the applicant was found inadmissible to the United States on November 26, 2000, and was expeditiously removed on the same date.

Section 212(a)(9)(A) 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.

. . . .

(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 Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel does not dispute the fact that the applicant attempted to enter the United States by fraud, but states that she has not shown a "continued disregard for, and abuse of the laws of this country, . . ." and disputes the Director's contention that "she is not a person who has good moral character". Counsel states that the applicant has remained in Mexico since the date of her removal, and therefore, has not shown a continued disregard of the immigration laws. The applicant's spouse submits an affidavit in which he states that the applicant has been living in Mexico since the date of her removal. In addition, he states that he is unable to participate in the upbringing of his daughter as he can only visit the applicant and his daughter occasionally because he has to work in the United States in order to maintain his home here, as well as support his wife and child in Mexico. Finally, he states that he suffers emotional and psychological hardship, he has been unable to sleep, and has been having panic attacks since he realized that his wife and daughter might not be able to join him in the United States.

As noted above, counsel and the applicant's spouse state that the applicant has been residing in Mexico since the date of her removal and there is no documentary evidence to show otherwise. Although both counsel and the applicant's spouse state that the applicant was removed from the United States on November 26, 2001, it has been established that the correct date of removal is November 26, 2000. It has now been more than five years since the applicant's date of removal. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 221(a)(9)(A)(i) of the Act.

ORDER: The appeal is dismissed.