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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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.

The applicant is a native and citizen of the Philippines who on April 17, 1989, was granted Lawful Permanent Resident (LPR) status. On June 5, 1992, in the United States District Court for the Central District of California, the applicant was convicted of the offenses of conspiracy to file false statements to the Immigration and Naturalization Service (INS), in violation of 18 U.S.C. § 371, filing false statements to the INS, in violation of 18 U.S.C. § 1001, fraud and misuse of entry visas, in violation of 18 U.S.C. § 1546 and aiding and abetting, in violation of 18 U.S.C. § 2(a). On June 5, 1996, the applicant was sentenced to 46 months imprisonment. On November 29, 1996, an Order to Show Cause (OSC) for a removal hearing before an Immigration Judge was issued and was delivered to the applicant on March 17, 1997. On October 20, 1997, an Immigration Judge ordered the applicant removed from the United States as an alien who at any time has been convicted of a violation of section 1546 of 18 U.S.C. relating to fraud and misuse of visas, permits, and other entry documents. The applicant filed an appeal with the Board of Immigration Appeals (BIA) that was dismissed as untimely filed on January 6, 1998. A Motion to Reopen (MTR) filed on November 23, 1998, was denied by the BIA on January 25, 1999, as untimely filed. On January 12, 1999, the applicant was removed to the Philippines. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of 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 travel to the United States and reside with her son and daughters.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. See *Director's Decision* dated November 12, 2004.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) signed by the applicant. The individual mentioned on the Form G-28 is not an individual described in the regulation at 8 C.F.R. § 292.1(a) and cannot represent the applicant in these proceedings. Therefore, the AAO will not be sending a copy of the decision to the individual mentioned on the Form G-28, but this office will accept the submitted information.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

....

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

On appeal, the applicant's representative submits affidavits from the applicant, her son, and her two daughters. In her affidavit, the applicant states that she accepts her responsibility and punishment and promises that she will never again commit any crime or be involved in anything other than to live a respectful and decent life. In addition, the applicant states that she is fully rehabilitated and has sought spiritual counseling and professional advice from many sources. Finally, the applicant states that she is sorry for her participation and involvement in illegal activities, and requests that her application be granted in order to be able to travel to the United States and reside with her children and grandchildren. The applicant's son and two daughters submit affidavits in which they state that if the applicant is permitted to enter the United States, they will support her emotionally and financially, and they submit copies of tax returns and financial statements.

Based on the applicant's conviction she is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. In the instant case the applicant's conviction is also an aggravated felony for immigration purposes.

Section 101(a)(43) of the Act defines the term "aggravated felony":

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, . . .

Section 212(h) of the Act provides, in pertinent part, that:

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

As noted above, the applicant was granted LPR status on April 17, 1989. Since the applicant was previously admitted for lawful permanent residence and has been convicted of an aggravated felony, no waiver is available to her under section 212(h) of the Act.

*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.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.