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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**



H4

Date: JUN 27 2011

Office: PORTLAND, OR

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:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, 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 Field Office Director, Portland, Oregon. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be 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 fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The record further shows that the applicant was removed from the United States on April 14, 1999, and subsequently entered the United States without inspection. The applicant is married to a U.S. citizen and seeks permission to reenter the United States after her removal in order to reside with her husband and children in the United States.

The field office director found that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and that the applicant does not meet the exception to this ground of inadmissibility. The field office director further found that the applicant failed to establish that the positive factors in her case outweigh the negative factors. In addition, the field office director found that the applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and that her waiver application was denied. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated February 11, 2009.

On appeal, counsel contends, *inter alia*, that the applicant "has never been 'ordered removed.'" *Notice of Appeal or Motion (Form I-290B)*, dated March 12, 2009. Counsel contends that even if she had been ordered removed, more than ten years have passed and, therefore, section 212(a)(9)(C)(i)(II) of the Act no longer applies. Counsel alternatively contends that "the \$1,000 245(i) penalty fee covers inadmissibility under INA 212(a)(9)(C)(i)(II)," and that the field office director failed to consider all of the hardships and positive equities in the case.

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

....

(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.

(ii) Exception. - Clause (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 readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Gonzales v. Dep't of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States, and the United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

The AAO finds counsel's contention that the applicant has never been ordered removed unpersuasive. The record shows that the applicant was removed from the United States on April 14, 1999. *Notice and Order of Expedited Removal (Form I-860)*, dated April 14, 1999; *Notice to Alien Ordered Removed/Departure Verification (Form I-296)*, dated April 14, 1999 (verifying the applicant's manner of departure was afoot at the San Ysidro, California, Port of Entry). The applicant subsequently entered the United States without inspection and birth certificates of her children in the record show that she gave birth to her daughter, [REDACTED] on March 2, 2000, and her son, [REDACTED] on September 9, 2001, in the United States. The record further shows that the applicant's April 14, 1999 removal order was reinstated on April 15, 2009, and she was again removed from the United States on April 29, 2009. *Warrant of Removal/Deportation (Form I-205)*, dated April 29, 2009 (indicating the applicant's manner of departure was afoot at the San Ysidro, California, Port of Entry); *Custody Order of the Immigration Judge*, dated April 27, 2009 (finding the applicant subject to reinstatement); *Warning to Alien Ordered Removed or Deported (Form I-294)*, dated April 16, 2009; *Notice of Intent/Decision to Reinstate Prior Order (Form I-871)*, dated April 15, 2009. Moreover, the record shows that the applicant's April 14, 1999 removal order was again reinstated on November 14, 2009, and she was removed from the United States for a third time on November

14, 2009. *Record of Sworn Statement in Administrative Proceedings*, dated November 14, 2009 (stating that she entered the United States yesterday by jumping the fence near Agua Prieta, Sonora, Mexico, and that she had been removed from the United States in the past); *Notice of Intent/Decision to Reinstate Prior Order (Form I-871)*, dated November 14, 2009; *Warrant of Removal/Deportation (Form I-205)*, dated November 14, 2009 (indicating the applicant's manner of departure was afoot in Douglas, Arizona); *Warning to Alien Ordered Removed or Deported (Form I-294)*, dated November 14, 2009. The record shows that the applicant's April 14, 1999 removal order was reinstated two days later on November 16, 2009, and she was again removed from the United States for the fourth time on November 16, 2009. *Record of Sworn Statement in Administrative Proceedings*, dated November 16, 2009 (stating that she "jumped the fence near Agua Prieta, Sonora, Mexico" and that she had been removed from the United States in the past); *Warrant of Removal/Deportation (Form I-205)*, dated November 16, 2009 (indicating the applicant's manner of departure was afoot in Douglas, Arizona); *Warning to Alien Ordered Removed or Deported (Form I-294)*, dated November 16, 2009; *Notice of Intent/Decision to Reinstate Prior Order (Form I-871)*, dated November 16, 2009.

Therefore, the record shows that the applicant was ordered removed under section 235(b)(1) and subsequently reentered the United States without admission. Therefore, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Contrary to counsel's contention that more than ten years have passed since her removal, the record shows that the applicant's last removal from the United States occurred on November 16, 2009. Thus, she has not remained outside the United States for ten years since her last departure. Accordingly, she is currently statutorily ineligible to apply for permission to reapply for admission.

In addition, the AAO finds unpersuasive counsel's contention that the applicant is eligible to adjust status under section 245(i) of the Act because the \$1,000 penalty fee purportedly covers inadmissibility under section 212(a)(9)(C)(i)(II). Although section 245(i) of the Act permits, *inter alia*, aliens who entered the United States without inspection, and who filed an application for adjustment on or before April 30, 2001, to apply for lawful permanent residence, it does not excuse inadmissibility under section 212(a)(9)(C)(i)(II). *See Matter of Torres-Garcia, supra; Gonzales v. Dep't of Homeland Security, supra*. Finally, because the applicant is statutorily ineligible to apply for permission to reapply for admission, no purpose would be served in considering all of the hardships and positive equities in the case. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.