



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H4

DATE: **DEC 08 2012**

Office: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States After Deportation or Removal under Section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C) (ii)

ON BEHALF OF APPLICANT:

[REDACTED]

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II). The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to remain in the United States with her lawful permanent resident spouse and U.S. citizen children.

In his decision of September 11, 2006, the director found that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for illegally reentering the United States after having been ordered removed. The director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the ten-year period required by section 212(a)(9)(C)(ii) of the Act. Accordingly, the director denied the Form I-212.

On appeal, counsel asserts that the director's decision is a violation of *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). Counsel asserts that the applicant is entitled to file the Form I-212.

The record contains, but is not limited to: counsel's brief; declarations from the applicant and her spouse; documents relating to the applicant's removal from the United States; employment and identification documents for the applicant's spouse; income tax records; and birth certificates for the applicant's children. The entire record was reviewed and considered in rendering this decision.

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 has consented to the alien's reapplying for admission. . . .

The record reflects that on April 5, 2001, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act. It further demonstrates that she returned to the United States the same month, entering without inspection. Based on this evidence, the AAO finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed from the United States and subsequently reentering the United States without being admitted.

On appeal, counsel contends that the applicant is eligible for adjustment pursuant to the decision reached by the Ninth Circuit Court of Appeals in *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004). However, in *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007), the Ninth Circuit overturned its decision in *Perez Gonzalez* and deferred to the Board of Immigration Appeals' decision in *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), which held that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-year bar. The Ninth Circuit subsequently clarified that its holding in *Duran Gonzalez* applied retroactively, even to those aliens who had Form I-212 applications pending before *Perez Gonzalez* was overturned. *Morales-Izquierdo v. DHS*, 600 F.3d 1076 (9<sup>th</sup> Cir. 2010). *See also Duran Gonzales v. DHS*, 659 F.3d 930 (9<sup>th</sup> Cir. 2011) (affirming the district court's order denying the plaintiff's motions to amend its class certification and declining to apply *Duran Gonzales* prospectively only); *Nunez-Reyes v. Holder*, 646 F.3d 684 (9<sup>th</sup> Cir. 2011) (stating that the general default principle is that a court's decisions apply retroactively to all cases still pending before the courts). Therefore, the applicant is not eligible for consideration under section 212(a)(9)(C)(ii) of the Act pursuant to *Perez Gonzalez*.

As the record in the present matter does not establish that the applicant has remained outside the United States for the required ten years, she is not eligible for consideration under section 212(a)(9)(C)(ii) of the Act. Accordingly, the appeal will be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.