



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE: [Redacted]

Office: Portland (POO)

Date: FEB 09 2000

IN RE: Applicant: [Redacted]

APPLICATION:

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

IN BEHALF OF APPLICANT:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Ferrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The application in this matter was denied by the District Director, Portland, Oregon, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected. The district director's decision will be withdrawn, and the matter will be remanded to him for further consideration and action.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on March 1996. She was apprehended while working and granted voluntary departure by an immigration judge until April 10, 1998 in lieu of removal. She failed to depart by that date, therefore she is inadmissible under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii). The applicant seeks permission to reapply for admission into the United States under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to live permanently with her spouse and child.

The district director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, counsel disagrees with that decision.

The skeletal record before the Associate Commissioner contains a request for extension of time to depart filed by counsel, a child's birth certificate, a Form I-212 application, a statement by counsel in support of the application, a decision and a statement by counsel on appeal. The absence of documentation going back to at least the applicant's apprehension, including perhaps a Form I-213, a Request to Appear, a Judge's decision, evidence of her marriage, evidence that she is the beneficiary of an approved or pending immigrant visa petition, etc., renders it impossible for the Associate Commissioner to properly adjudicate the appeal following Matter of Tin, 14 I&N Dec. 371 (Reg. Comm. 1973); Matter of Lee, 17 I&N Dec. 275 (Comm. 1978); Matter of Acosta, 14 I&N Dec. 361 (D.D. 1973); Garcia-Lopez v. INS, 923 F.2d 72 (7th Cir. 1991); Carnalla-Muñoz v. INS, 627 F.2d 1004 (9th Cir. 1980); Matter of Tijam, Interim Decision 3372 (BIA 1998).

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision; including the following items arranged from top to bottom in the following order:

- (1) Notice of Entry of Appearance as Attorney or Representative (Form G-28).
- (2) Brief, statement, and/or supporting evidence.
- (3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).
- (4) Decision.
- (7) Investigative reports and/or other derogatory information.

(8) Application or petition (Form I-212).

(10) Evidence in support of application or petition.

As constituted, the record fails to contain sufficient evidence relating to the application which could be used in the adjudication process. Therefore, the district director's decision will be withdrawn.

The appeal of the district director's decision will be rejected, and the record remanded to him so that he can adjudicate the case and enter a new decision based on documentation contained in a record of proceeding which can be properly reviewed by the Associate Commissioner. If that decision is adverse to the applicant, the district director will certify his decision to the Associate Commissioner for review accompanied by a properly prepared record of proceeding.

**ORDER:** The appeal is rejected. The district director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.