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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

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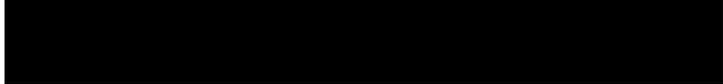
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FILE:

Office: Los Angeles

Date:

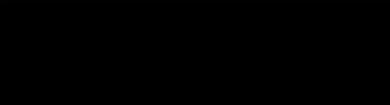
IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

MAY1603_01H2212

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected, and the matter will be remanded.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 or willful misrepresentation on January 11, 1996. She was ordered excluded and deported by an immigration judge on January 17, 1996, and she was removed from the United States. Therefore, she is inadmissible to the United States under section 212(a)(9)(A)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(II). In March 1994 the applicant married a native of Mexico who became a naturalized U.S. citizen on July 12, 2000. The applicant is the beneficiary of an approved Petition for Alien Relative. She seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel requested additional time in which to file a written brief. No further information or documentation has been received in the record therefore a decision will be made based on the current record.

The record reflects that the applicant attempted to procure admission into the United States on January 11, 1996, by presenting a photo-switched Mexican passport in the name [REDACTED] that contained a counterfeit I-551 stamp. The record further reflects that the applicant was again present in the United States shortly after her removal in January 1996 without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. 1326 (a felony).

On September 19, 2001, the Bureau requested that the applicant submit a Form I-212 application to request permission to reapply for admission. That document is contained in the record but it has not been adjudicated.

Pursuant to O.I. § 212.7(a)(1)(i), when an alien requires both permission to reapply for admission on form I-212 and a waiver of grounds of inadmissibility on Form I-601, the Form I-212 application will be adjudicated first. If the Form I-212 application is denied, the Form I-601 application shall be rejected on the ground that the alien is not "otherwise admissible" as required by section 212(h) or (i) and the fee for filing this application will be refunded.

The appeal of the district director's decision will be rejected, and the record remanded so that the Form I-212 application can be adjudicated first. If the district director denies the Form I-212 application, the Form I-212 decision shall be certified to the AAO for review and the Form I-601 application shall be rejected and the fee refunded. If the Form I-212 application is approved then the appeal of the Form I-601 application shall be certified to the AAO for review.

ORDER: The appeal is rejected. The district director's decision is withdrawn. The matter is remanded 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 AAO for review.