U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: AUG 21 2001

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)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(C)(iii)

IN BEHALF OF APPLICANT:

[redacted]

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who initially was present in the United States without a lawful admission or parole in 1989. She was found to be inadmissible to the United States at entry on August 11, 1997, 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 misrepresention. She was removed from the United States under section 235(b)(1)(A)(i) of the Act, 8 U.S.C. 1225(b)(1)(A)(i). Hence, she is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. 1182(a)(9)(A)(i), for having been ordered expeditiously removed from the United States.

The applicant was present in the United States again without a lawful admission or parole on August 20, 1997, and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. 1326 (a felony). The applicant seeks permission to reapply for admission into the United States to accept employment in the United States and remain with her family.

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

On appeal, the applicant requests a favorable exercise of discretion, provides a psychological-sociological report of her entire family and describes the various hardships that the family would endure if she had to leave the United States.

The record reflects that the applicant was apprehended at the Port of Entry in El Paso, Texas, on August 11, 1997, while attempting to procure admission into the United States by fraud by using the Nonresident Alien Border Crossing Card of her sister. She was removed from the United States on August 11, 1997. The applicant feloniously reentered the United States on August 20, 1997. This act renders her inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. 1182(a)(9)(C)(i)(II).

Section 212(a)(6)(C) of the Act provides, in part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the

spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she must file a Form I-601 Waiver of Grounds of Inadmissibility application to have that ground of inadmissibility waived.

Section 212(a)(9)(C) of the Act provides that:

(i) 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) 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 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 has consented to the alien's reapplying for admission.

The applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act and she must file a Form I-212 application to obtain permission to reapply for admission.

O.I.212.7(a)(1)(i) provides, in pertinent part, that when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility, 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 refunded.

Section 212(a)(9)(C) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

(IIRIRA) and became effective on April 1, 1997. An appeal must be decided according to the law as it exists on the date it is before the appellate body. According to the reasoning in Matter of Soriano, 21 I&N Dec. 516 (BIA 1996, A.G. 1997), the provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided.

Pursuant to section 212(a)(9)(C) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or sought to enter the United States without inspection are permanently inadmissible.

For the purposes of section 212(a)(9)(C) of the Act, time in unlawful presence may accrue prior to April 1, 1997. In addition, when measuring time spent unlawfully present in the United States, the time is measured cumulatively for purposes of section 212(a)(9)(C) of the Act.

The statute makes an exception for aliens who seek admission more than 10 years after their last departure who have been unlawfully present in the United States for an aggregate period of more than 1 year and have obtained permission to reapply for admission. This exception does not apply to aliens who have attempted to re-enter or actually have re-entered the United States without being inspected and admitted or paroled.

The record reflects that the applicant was removed pursuant to section 235(b)(1) of the Act on August 11, 1997. She unlawfully reentered the United States without being inspected, admitted or paroled on August 20, 1997, without permission to reapply, without obtaining a waiver of grounds of inadmissibility, and she has been unlawfully present in the United States for more than 1 year.

The applicant is, therefore, permanently inadmissible under section 212(a)(C)(II) of the Act and no relief is available for such ground of inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.