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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 19 2003

FILE [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the District Director, California Service Center, and 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. On November 2, 1998, the applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1225(b)(1), for attempting to enter the United States (U.S.) by willfully misrepresenting her true identity and for not being in possession of a valid entry document. The applicant was barred from readmission into the United States for a period of five years from the date of her removal, absent permission from the Secretary of Homeland Security ("Secretary", formerly the Attorney General). The record indicates that the applicant illegally reentered the U.S. on November 30, 1998, and that she has resided illegally in the U.S. since that time. The record indicates that the applicant's husband became a naturalized U.S. citizen on December 19, 2000, and that the applicant filed an application for adjustment of status on January 31, 2001.

The application was denied by the district director, Fresno, California, on August 15, 2002. A subsequent application for permission to reapply for admission into the U.S. after removal, was denied by the district director at the California Service Center. The applicant seeks permission to reapply for admission into the United States after deportation or removal (I-212 application) in order to reside in the U.S. with her U.S. citizen husband and children.

The district director at the California Service Center found that, based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(9)(B), as an alien who was unlawfully present in the U.S. for one year or more and who seeks admission within 10 years of the date of removal. The district director additionally found the applicant inadmissible and ineligible for relief pursuant to section 241(a)(5) of the Act, and that the applicant was subject to reinstatement of her removal order. The district director concluded that, in light of the applicant's inadmissibility, no useful purpose would be served in adjudicating or granting the applicant's I-212 application. The application was denied accordingly.

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

(9) ALIENS PREVIOUSLY Removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

. . . .

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period 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.

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

. . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 241(a)(5) of the Act states:

> (5) Reinstatement of removal orders against aliens illegally reentering.-If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

Approval of an I-212 application requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects. The Board of Immigration Appeals (BIA) case, *Matter of Tin,* 14 I&N Dec. 373, 374 (Comm. 1973), states, in pertinent part that:

> In determining whether the consent required by statute [for an application for permission to reapply for admission] should be granted [by the Attorney General], all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

It is noted that the applicant's appeal does not address any of the above factors. The appeal states only that the applicant wants to reside with her U.S. citizen husband and children and that she wants to take care of her children. No further details or information were provided. Based on the evidence in the record, the unfavorable aspects of the applicant's case outweigh the favorable aspects.

Although the applicant is married to a U.S. citizen and has U.S. citizen children, the evidence reflects that the applicant married her husband in Mexico in October, 1998, less than a month before the applicant's first attempt to enter the U.S. with fraudulent documentation. The applicant's husband was a legal permanent resident at the time and there is no evidence in the record that he attempted to petition for the applicant to legally enter the United States. In addition, although the applicant has U.S. citizen children, the record indicates that the children

were born while the applicant remained illegally in the United States.

The applicant has failed to demonstrate respect for immigration laws and there is no evidence of reform or rehabilitation in the record. The applicant reentered the U.S. illegally less than a month after being ordered removed for willful misrepresentation of her identity, and in spite of a clear five year bar to readmission to the United States. The applicant then remained illegally in the United States and she filed an application for permission to apply for admission into the U.S. while she was clearly already residing in this country.

Moreover, in *Matter of Martinez-Torres,* 10 I&N Dec. 776 (BIA 1964), the BIA held that in the case of an applicant who is mandatorily inadmissible to the U.S. "no purpose would be served in granting [the] application for permission to reapply for admission into the United States." The BIA held further that the district director's action in denying an I-212 application as a matter of administrative discretion was proper.

A review of the documentation in the record reflects that the applicant is inadmissible to the U.S. and that pursuant to section 241(a)(5) of the Act, she is statutorily inadmissible and thus ineligible for any relief under the Act. The district director's denial of her application was therefore proper.

ORDER: The appeal is dismissed.