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**U.S. Department of Homeland Security**

Bureau of Citizenship and Immigration Services

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

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

[redacted]

FILE [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 20 2003

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

**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

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212 application) was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 35-year old native and citizen of Mexico. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9) for having been ordered removed from the United States. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to live with her U.S. citizen husband.

The appeal was filed by an attorney on behalf of the applicant. The attorney failed to properly enter his appearance by filing an executed Form G-28 (notice of entry of appearance); therefore, the Bureau will not provide him with notice of this decision. 8 C.F.R. § 292.2.

The director listed the following known factors: that she has no known criminal record, and that the applicant attempted entry to the United States by presenting counterfeit Forms I-512 and I-94. The director noted that it appeared that the applicant had re-entered the United States after her removal without inspection and without gaining permission to reapply for admission.

The director failed to mention that the applicant is married to a United States citizen. The director noted that there was no evidence that the applicant's spouse had filed an immigrant visa petition on her behalf. There is no requirement that an applicant seeking permission to reenter the United States be the beneficiary of an approved or pending visa petition. According to the evidence on the record, the applicant was expecting to deliver a child in June 2003; and both she and her husband have been undergoing treatment for depression since her removal from the United States. The evidence also indicates that the applicant and her husband own their own home in the United States.

On appeal, the applicant asserts that the director failed to consider all the evidence adequately and that the applicant has met her burden of proof.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) states in pertinent part:

(9) Aliens Previously Removed.-

 [redacted]

(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.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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.

Approval of an I-212 application requires that the favorable aspects of an applicant's case outweigh the unfavorable aspects.

In determining whether the consent required by statute should be granted, 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.

*Matter of Tin,* 14 I&N Dec. 373, 374 (Comm. 1973).

In addition, the decision points out that the applicant attempted to enter the U.S. by using a fraudulent alien registration card on April 16, 1998. The decision states further that the applicant was ordered removed from the U.S. on April 25, 1998, and that she subsequently disregarded a bar to reentry into the U.S. absent Bureau approval, and illegally returned and resided in the United States.

While this office finds that the director did not specifically address all of the evidence on the record, the director's decision did balance the favorable and unfavorable aspects of the applicant's case, and that the decision analyzed how the unfavorable factors outweighed the favorable factors in the case.

In addition, this office finds that the unfavorable factors in the applicant's case outweigh the favorable factors.

In discretionary matters, the applicant bears the full burden of proving that he merits an exercise of discretion by the Secretary of Homeland Security ("Secretary"). *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant in this case has failed to establish that she warrants a favorable exercise of discretion.

The record reflects that the applicant was ordered removed and was actually removed on April 24, 1998. The applicant indicated that she returned to the United States unlawfully twice after she was removed in April 1998. (*See* applicant's response to director's request for evidence). Therefore, she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and must remain outside the United States for at least 10 years before the Bureau will consider her application for permission to reapply.

Further, section 241(a)(5) of the Act, 8 U.S.C § 1231(a)(5), provides that:

> 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 reentry.

The applicant unlawfully reentered the United States after April 1, 1997, the effective date of section 241(a)(5), and is subject to the provisions of section 241(a)(5) of the Act. Therefore, she is not eligible for any relief under this Act and the appeal will be dismissed.

**ORDER:** The appeal will be dismissed.