U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 0 4 2013 Office: SPOKANE, WA FILE: A97[redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii).

ON BEHALF OF APPLICANT:

PHILIP HORNIK
520 SW SIXTH AVENUE, SUITE 1010
PORTLAND, OR 97204-1595

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

I-601

FEB - 6 2013

DISCUSSION: The waiver application was denied by the Field Office Director, Spokane, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Mexico who re-entered the United States without admission after having previously been removed pursuant to section 235(b)(1) of the Act. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II). The applicant is the beneficiary of an approved Form I-360 Petition for Amerasian, Widow or Special Immigrant, and is seeking admission based on the exception to 212(a)(9)(C)(i)(II) inadmissibility as a VAWA recipient pursuant to section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii), in order to reside in the United States.

The Field Office Director denied the applicant's Form I-601 Application for Waiver of Grounds of Inadmissibility on May 1, 2009 because the applicant's Form I-212 had been denied due to ineligibility.

On appeal, counsel for the applicant asserts that the Field Officer's Decision was incorrect as a matter of law, asserting that the applicant's Form I-212 was improperly denied and that the applicant qualifies for an exception to her section 212(a)(9)(C)(i)(II) inadmissibility as a recipient of an approved Form I-360. *Form I-290B*, received March 13, 2012.

In support of these assertions, the record contains, but is not limited to: counsel's brief in support of the appeal; statements from the applicant, her mother and her sister; court records related to the applicant's divorce from her spouse; copies of court records related to abuse suffered by the applicant at the hands of her spouse; a copy of the approval notice for the applicant's Form I-360; and country conditions materials discussing the lack of domestic violence protections in Mexico. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-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) Exception. 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 alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the [Secretary] has consented to the alien's reapplying for admission.
>
> (iii) Waiver. The [Secretary], in the [Secretary's] discretion, may waive the application of clause (i) in the case of an alien who is VAWA self-petitioner if there is a connection between--
>
> > (1) the alien's battering or subjection to extreme cruelty; and
> >
> > (2) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The record indicates that the applicant attempted to enter the United States on May 26, 2002, but was detained and removed in an expedited proceeding pursuant to section 235(b)(1) of the Act. She entered the United States the next day without inspection, and has resided in the United States with her two children since that time.

The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Under section 212(a)(9)(C)(ii) of the Act, the applicant is required to obtain consent to reapply for admission to the United States. Consent to reapply under section 212(a)(9)(C)(ii) can only be granted if: (1) the applicant has left the United States, (2) is currently abroad, and (3) is seeking admission to the United States at least 10 years after the date of her last departure. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).

The AAO notes that section 212(a)(9)(C)(iii) of the Act potentially provides for a waiver of inadmissibility under section 212(a)(9)(C)(i) of the Act to VAWA self-petitioners. The applicant has an approved Form I-360 petition as a VAWA self-petitioner based on her abuse at the hands of her former spouse. The record must also reflect that removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States, was connected to the applicant's subjection to battery or extreme cruelty. Section 212(a)(9)(C)(iii) of the Act.

The applicant entered the United States without inspection in approximately May 2002 after her spouse, who had filed an I-130 petition on her behalf, abandoned her and their two children in Mexico. This entry serves as the event that triggered inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

The record indicates that the applicant fled Mexico with her two sons after being abandoned by an abusive former spouse. Her former spouse had been routinely entering the United States to find employment, and had filed a Form I-130, Petition for Alien Relative, on her behalf which was subsequently approved. The applicant's former spouse then ceased contact with her for extended periods, informed her that he was residing with another individual in the United States, would not support her or her two children and would not file an application for adjustment in the United States on her behalf. After the applicant entered the United States and re-united with her two young sons, she found employment and entered her children into the public school system in Spokane, Washington.

The record contains evidence – in the form of court records – which establishes that, after a year of residing in Washington States the applicant's estranged spouse broke into the house where she resided and physically and sexually assaulted her and one of her sons. He was subsequently convicted of First Degree Burglary; Fourth Degree Assault and Driving Under the Influence of Intoxicants related to the abuse of the applicant and was deported to Mexico. The applicant has explained that her former spouse has threatened to kill or injure her and her children if they return to Mexico.

Upon review, the AAO finds that the applicant has established a sufficient connection between the battering and subjection to extreme cruelty she suffered at the hands of her former spouse and her departure and reentry to the United States that gave rise to inadmissibility under section 212(a)(9)(C)(i) of the Act. Section 212(a)(9)(C)(iii) of the Act. The AAO finds the record to support that her entry was connected to her "battering or subjection to extreme cruelty" at the hands of her former spouse, as required by section 212(a)(9)(C)(iii) of the Act.

Accordingly, the applicant has shown that she meets the requirements for a waiver under section 212(a)(9)(C)(iii) of the Act. The AAO finds that the compelling circumstances in the present matter warrant a favorable exercise of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the decision of the field office director will be withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 0 4 2013 Office: SPOKANE, WA FILE: A97[redacted]

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

ON BEHALF OF APPLICANT:

PHILIP HORNIK
520 SW SIXTH AVENUE, SUITE 1010
PORTLAND, OR 97204-1595

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

I-212

FEB - 6 2013

DISCUSSION: The Field Office Director, Spokane, Washington, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without inspection within 10 years of having been removed pursuant to a section 235(b)(1) proceeding. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She seeks permission, *nunc pro tunc*, 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 escape her abusive former spouse in Mexico and reside in the United States with her two young sons.

The field office director concluded that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(II) and denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated February 9, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was incorrect as a matter of law, asserting that the applicant's Form I-212 was improperly denied. *Form I-290B*, received March 13, 2012.

In support of these assertions, the record contains, but is not limited to: counsel's brief in support of the appeal; statements from the applicant, her mother and her sister; court records related to the applicant's divorce from her former spouse; copies of court records related to abuse suffered by the applicant at the hands of her former spouse; a copy of the approval notice for the applicant's Form I-360; and country conditions materials discussing the lack of domestic violence protections in Mexico. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (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 five years of the date of such removal (or within 20 years in the case of a [illegible]nd or subsequent removal or at any time in the case of an convicted of an aggravated felony) is inadmissible.
> >
> > ther aliens.-Any alien not described in clause (i) who-

= I-212

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

The record indicates that the applicant attempted to enter the United States on May 26, 2002, but was detained and removed in an expedited proceeding pursuant to section 235(b)(1) of the Act. The applicant then re-entered the United States the next day without inspection. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The applicant is the recipient of an approved Form I-360, Petition for Amerasian, Widow or Special Immigrant. The record establishes that the applicant fled Mexico with her two sons after being abandoned by an abusive former spouse. Her former spouse had been routinely entering the United States to find employment, and had filed a Form I-130, Petition for Alien Relative, on her behalf which was subsequently approved. The applicant's former spouse then ceased contact with her for extended periods, informed her that he was residing with another individual in the United States, would not support her or her two children and would not file an application for adjustment in the United States on her behalf. After the applicant entered the United States and re-united with her two young sons, she found employment and entered her children into the public school system in Spokane, Washington. In 2003, after having resided in the United States for roughly one year, the applicant's former spouse broke into her house and assaulted her physically and sexually. Her former spouse was convicted of burglary and an assault charge related to this incident, and was deported to Mexico. The applicant's former spouse has threatened to harm or kill her or her children if they return to Mexico.

In *Matter of Tin,* 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

> The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

> [T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The record does not contain any evidence that the applicant has violated any other laws during her residence in the United States, and the AAO finds no basis to question the moral character of the applicant. *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978).

The factors weighing in favor of granting the applicant permission to reapply for admission to the United States include the fact that she has an approved Form I-360 petition as a VAWA self-petitioner, the fact that she and her two young sons have established significant ties to their community in Spokane, Washington, and, most importantly, the fact that the applicant remains under threat of death or serious harm if she returns to Mexico. The AAO finds that these factors outweigh the fact that the applicant entered the United States within 10 years of having been removed pursuant to a section 235(b)(1) proceeding. As such, the AAO concludes that a favorable exercise of discretion is warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.