

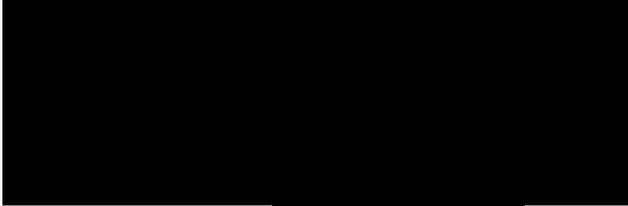
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

HL



FILE:

Office: SAN FRANCISCO

Date: **SEP 08 2006**

IN RE:



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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in cursive script, appearing to read "James P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, CA. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 in April 1995. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that under section 212(i) waiver proceedings the applicant failed to show that a qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. The director also found that the applicant was inadmissible under section 212(a)(9)(C) and as a result did not have a waiver available to him. The director stated that the applicant is statutorily inadmissible until he receives advanced permission to apply for admission. The applicant cannot receive advanced permission until 10 years after his last departure from the United States. Thus, the applicant was found statutorily inadmissible and ineligible for a waiver. The application was denied accordingly. *Decision of the District Director*, dated May 24, 2004.

On appeal, the applicant states that his spouse and children will suffer extreme hardship as a result of his inadmissibility. *Form I-290B*, dated June 11, 2004.

Before the AAO can determine whether extreme hardship would be imposed on a qualifying relative, it must first determine whether any purpose would be served in granting the applicant's waiver application.

The record indicates that the applicant entered the United States with a tourist visa in June or July of 1992. The applicant departed the United States in December 1994 and in April 1995 he attempted to re-enter the United States with his tourist visa. While being interviewed by an immigration officer the applicant testified that his purpose for entering the United States was for vacation when he intended to reside in the United States. During this interview the immigration officer discovered the applicant was in possession of a fraudulent lawful permanent resident card. The applicant was returned to Mexico. Then in May 1995 the applicant returned to the United States illegally. The applicant resided in the United States illegally from May 1995 to December 1998 when he returned to Mexico. In 1999 the applicant then re-entered the United States illegally for a second time and continues to reside in the United States with his wife and children. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his December 1998 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act.

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. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

- (1) the alien's having been battered or subjected to extreme cruelty; and
- (2) the alien's--
  - (A) removal;
  - (B) departure from the United States;
  - (C) reentry or reentries into the United States; or
  - (D) attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago and the Service has granted the applicant permission to reapply for admission. In the present matter, the applicant's last departure from the United States occurred in December 1998, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission and as a result is statutorily inadmissible. As the applicant is statutorily inadmissible under section 212(a)(9)(C)(i) of the Act, no purpose would be served in granting the applicant's waiver application under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.