

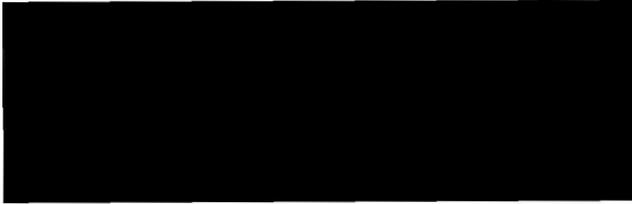


U.S. Citizenship  
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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO Date: JUN 20 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility 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

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, Mexico. 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is also inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i). The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant was statutorily ineligible to file a waiver application. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated November 24, 2004.

On appeal, the applicant's spouse asserts that her family is having financial troubles because of the inadmissibility of the applicant. She asks for the applicant's application to be reviewed. *See Letter from Applicant's Spouse*, undated.

In the present application, the record indicates that the applicant entered the United States without inspection in October 1999 and continuously resided in the United States until September 2003. The applicant's record also indicates that he was apprehended by the U.S. Border Patrol on three occasions (October 26, 1999, May 5, 2001, and May 20, 2001) and was voluntarily returned to Mexico. The record further shows that the applicant was arrested and charged with Driving While Intoxicated in Texas on April 13, 2002. Therefore, the applicant accrued unlawful presence for an aggregate of more than one year when he resided in the United States from October 1999 to September 2003 occasionally departing the United States for short trips to Mexico. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his September 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who

is the spouse or 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 [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

However because the applicant is also inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i) no purpose would be served in granting him a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. As noted previously, the applicant was unlawfully present in the United States for more than one year, from October 1999 until September 2003. After accumulating an aggregate period of more than one year of unlawful presence the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission. Thus, the applicant is barred from even applying for permission to reapply for admission until 10 years have elapsed since the date of the alien's last departure from the United States.

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)(I) of the Act is permanently inadmissible and there is no waiver for this ground of inadmissibility. Although, the applicant is not eligible for a waiver, ten years after his last departure from the United States he will be eligible to apply for permission to reapply for admission (Form I-212). The applicant 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 September 2003, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. The applicant in the instant case does not qualify for a waiver or for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, no purpose would be served in granting the applicant's waiver application. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.