U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: NOV 01 2004

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

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

On appeal, counsel requests oral argument. Regulations governing these proceedings, at 8 C.F.R. § 103.3(b), provide that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is established. Consequently, the request is denied.

The record reflects that the applicant is a native and citizen of Mexico who was found inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i), 1182(a)(9)(C)(i)(II). She filed an application for waiver of inadmissibility and evidence of extreme hardship in response to instructions provided by the district director. *Letter of Acting District Director* (February 27, 2003).

The district director denied the application for waiver, finding that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required by INA § 212(i), 8 U.S.C. § 1182. *Decision of District Director* (October 24, 2003).

The district director found the applicant inadmissible under INA § 212(a)(9)(C)(i)(II), which provides, in pertinent part:

> (i) In general.—Any alien who—
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> . . .
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> (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 . . . the Attorney General [now the Secretary of Homeland Security] 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—
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> (1) the alien's having been battered or subjected to extreme cruelty; and
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> (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.

8 U.S.C. § 1182(a)(9)(C)(i)(II). The district director's finding of inadmissibility in the instant case is based on the applicant's having been ordered excluded and deported by an immigration judge on February 28, 1996, her subsequent departure or removal from the United States, and her unlawful entry by evading inspection in April, 1996. The applicant does not contest the finding of inadmissibility under this section. The AAO notes that a waiver of this ground of inadmissibility is available only to individuals classified as battered spouses under the cited sections of section 204 of the INA. *See also* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

Inasmuch as the applicant is inadmissible and there is no waiver available for inadmissibility under section 212(a)(9)(C)(i)(II), no purpose would be served in discussing whether the alien is eligible for a waiver of the 212(a)(6)(C)(i) inadmissibility grounds pursuant to INA § 212(i).

The AAO therefore finds that the district director erred in rendering the decision below based on a waiver of inadmissibility under section 212(i) of the Act, when in fact there is no waiver available for inadmissibility under INA § 212(a)(9)(C)(i)(II).

ORDER: The appeal is dismissed.