U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CHICAGO, IL Date: APR 30 2009

IN RE: [redacted]

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois and 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 is inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C) for having attempted to procure admission into the United States by fraud or willful misrepresentation and pursuant to section 212(a)(9)(B)(i)(II) of 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 ten years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and the mother of three U.S. citizens. She seeks waivers of her inadmissibilities to reside in the United States with her family.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated August 19, 2006.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred in finding the applicant to be inadmissible under section 212(a)(6)(C) of the Act and in finding that that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative as necessary for a waiver. *Form I-290B; Attorney's brief.*

The record reflects that the applicant entered the United States in November 1998 at El Paso, Texas by presenting another individual's social security card to an immigration officer. *Sworn Statement,* dated February 23, 2003. The applicant returned to Mexico in October 2000. *Id.* In March 2001, she entered the United States without inspection by crossing a river at the US-Mexico border. *Id.* While in the United States, the applicant went to the airport in El Paso, Texas where immigration officers apprehended her and returned her to Mexico. *Id.* One week later, on March 17, 2001, the applicant entered the United States at Los Angeles, California by using another individual's passport. *Id.* She has remained in the United States since that time. The applicant accrued unlawful presence from November 1998 until she departed the United States in October 2000, and from her entry without inspection in March 2001 until she was returned to Mexico that same month.

Based on the above history, the AAO finds that the applicant is not only inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act but also pursuant to section 212(a)(9)(C)(i)(I) for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted.

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, only those individuals who have remained outside the United States for at least ten years since their last departure are eligible for consideration. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).[1] The record does not reflect that the applicant in the present matter has resided outside of the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i) of the Act and the AAO finds no purpose would be served in considering the merits of her Form I-601 waiver application under sections 212(a)(9)(B)(v) and 212(i) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The AAO takes note of the preliminary injunction that was entered against the ability of the Department of Homeland Security (DHS) to follow *Matter of Torres-Garcia*. *Gonzales v. DHS,* 239 F.R.D. 620 (W.D. Wash. 2006). The Ninth Circuit, however, reversed the district court, and ordered the vacating of that injunction. *Gonzales v. DHS* (*Gonzales II*), 508 F.3d 1227 (9th Cir. 2007). In its opinion, the Ninth Circuit held that the Board of Immigration Appeals' decision in *Matter of Torres-Garcia* was entitled to judicial deference. *Gonzales II,* 508 F.3d at 1241-42. The Ninth Circuit's mandate issued January 23, 2009. On February 6, 2009, the district court denied the plaintiffs' motion for a new preliminary injunction. Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt # 59), *Gonzales v. DHS,* No. C06-1411-MJP (W.D. Wash. Filed February 6, 2006). Thus, as of the date of this decision, there is no judicial prohibition in force that precludes the AAO applying the rule laid down in *Matter of Torres-Garcia*.