U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

+64

PUBLIC COPY

[redacted]

FILE: [redacted] Office: SEATTLE (SPOKANE) Date: OCT 12 2006

IN RE: [redacted]

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

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, Chief
Administrative Appeals Office

DISCUSSION: The district director, Seattle, Washington, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, as the waiver application is unnecessary.

The applicant, [redacted] is a native and citizen of Mexico who, in order to remain in the United States with her U.S. citizen (USC) spouse, [redacted] filed an Application for Waiver of Ground of Inadmissibility (Form I-601).

The record reflects that [redacted] entered the United States on numerous occasions with a multiple-entry B-2 visa. Her last valid entry using the visa was on August 5, 1997 and she was given until February 4, 1998 to remain in the United States. She remained in the United States beyond the permitted time until she traveled to Mexico in February 2000 to try to renew her visa. Her application was denied. That same month, she re-entered the United States without a valid visa.

The district director found the applicant inadmissible under section 212(a)(9)(C) of the Act, presumably for having been unlawfully present in the United States for an aggregate period of more than 1 year and reentering the United States without being admitted, and concluded that no discretionary waiver for inadmissibility exists under this section of the Act. The director further found that the applicant was ineligible to adjust her status to that of lawful permanent resident under section 245(i) of the Act.[1]

The applicant appeals the denial of the Form I-601 and asserts that her USC husband would suffer emotionally and financially if her waiver application is denied.

The applicant is ineligible to adjust under section 245(i) of the Act because her husband did not file a Petition for Alien Relative (Form I-130) on her behalf before April 1, 2001. Section 245(i) allows individuals who entered without inspection to adjust status, in the United States, if their Form I-130 petition was filed on or before April 30, 2001 and if they were physically present in the United States on December 21, 2000. The applicant's husband could not have filed an I-130 petition on her behalf before this deadline as the couple did not marry until November 24, 2001. The applicant is an immediate relative and has an approved I-130. After the expiration of § 245(i) on April 30, 2001, however, in order to adjust status in the United States under § 245(a), the applicant must *have been inspected and admitted or paroled* into the United States. Under current law, an individual, even one married to a U.S. citizen, who enters the United States without having been inspected and admitted or paroled is not eligible to adjust status *in* the United States. As the applicant

[1] The AAO notes that the applicant may apply for consent to reapply for admission under section 212(a)(9)(C) through use of an Application For Permission to Reapply for Admission (Form I-212). An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless the alien is "seeking admission more than ten years after the date of the alien's last departure. . ." *See* Section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. section 1182(a)(9)(C)(ii). In the present matter, the applicant's last departure from the U.S. occurred in 2000, considerably less than ten years ago. Thus, as a matter of law, the applicant is not currently eligible to file a Form I-212.[1]

was not inspected and admitted or paroled, she must apply for an immigrant visa at a U.S. consulate or embassy overseas.

As there is currently no valid underlying application to adjust status pending in this case, there is no basis for the I-601 application.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.