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

U.S. Citizenship and Immigration Services

H5

[redacted]

FILE: [redacted] Office: SEATTLE, WA Date: AUG 11 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Seattle, Washington, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and it 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, on January 2, 1999, appeared at the San Ysidro, California port of entry. The applicant presented a photo-altered Mexican passport containing a U.S. nonimmigrant visa bearing the name [redacted] The applicant was placed into secondary inspection. The applicant admitted that he was not the true owner of the document and that he had no documentation to enter the United States. The applicant admitted that he knew it was illegal to attempt to enter the United States utilizing the document. The applicant failed to provide his true identity to immigration officers. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud. On January 3, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) under the name [redacted]

On September 18, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. The Form I-485 indicates that the applicant entered the United States without inspection in January 1999. On the same day, the applicant filed the Form I-601 and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On September 1, 2009, the Form I-485 and Form I-212 were denied. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to obtain admission by fraud. He seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with his U.S. citizen spouse, two U.S. citizen children and one U.S. citizen stepchild.

The field office director determined that the applicant did not establish extreme hardship to his U.S. citizen spouse. The field office director determined that the applicant's Form I-212 was denied because he is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that no purpose would be served in entertaining the Form I-601 and denied it accordingly. *See Field Office Director's Decision,* dated September 1, 2009.

Counsel contends that the applicant can meet the extreme hardship standard and is deserving of a favorable exercise of discretion. Counsel contends that the denial of the Form I-601 based on the denial of the Form I-212 is in error. *See Counsel's Brief,* dated October 29, 2009. In support of his contentions, counsel submits the referenced brief, evidence of hardship and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
>
> > (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United

States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

. . . .

(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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

> The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—
>
> (I) the alien's battering or subjection to extreme cruelty; and
>
> (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The AAO notes that a waiver to the section 212(a)(9)(C)(i) ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See also* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless he or she has *remained outside* the United States for more than 10 years 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); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). 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, the applicant has remained outside the United States since that departure, *and* that U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. While the applicant's last departure from the United States occurred on January 3, 1999, more than ten years ago, he has not remained outside the United States since that departure and he is currently in the United States.[1] The applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Inasmuch as the applicant is inadmissible and the applicant is statutorily ineligible for the waiver or exception under sections 212(a)(9)(C)(ii) or (iii) of the Act, 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 field office director did not err in finding that the Form I-601 should be denied because the applicant's Form I-212 was denied. As discussed above, the applicant is statutorily inadmissible and ineligible for a waiver of his inadmissibility under INA § 212(a)(9)(C)(i)(II).

ORDER: The appeal is dismissed.

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[1] The applicant will be required to submit evidence establishing that he is currently outside the United States and has remained outside the United States for period of ten years when he becomes eligible to apply for permission to reapply for admission.