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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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: SANTA ANA Date: MAR 06 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(6)(C)(i) and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

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).

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Santa Ana, California, denied the waiver application that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The record contains two Form I-601 waiver applications. The first was denied on November 6, 2003 and was not appealed. Today's decision is concerned with the other waiver application, which was submitted to USCIS on March 15, 2007 and denied on June 25, 2007

In the decision of June 25, 2007 the field office director found that the applicant had sought to enter the United States by fraud or by misrepresenting a material fact, and, after being expeditiously removed from the United States, had reentered the United States by presenting an immigration document issued to another and representing herself to be that other person. The field office director therefore found that the applicant is also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for fraud or misrepresentation and, in addition, reinstated the warrant of deportation previously issued, and noted that the applicant is not eligible for any relief from deportation.

The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband. The field office district director found that the applicant had failed to establish that denial of the waiver application would result in extreme hardship to her U.S. citizen spouse and denied the application. On appeal counsel argued that the evidence in the record demonstrates that failure to grant the waiver application will, in fact, result in extreme hardship to the applicant's husband.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

On May 24, 1998 the applicant attempted to reenter the United States using a Form I-551 Alien Registration Card, which had been issued to another person and which the applicant had purchased for $30. The applicant was expeditiously removed, also on May 24, 1998. Subsequently, on May 30, 1998, she entered the United States without inspection.

The AAO affirms the finding of the field office director that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The facts of the case, however, suggest additional issues that were not addressed in the decision of denial.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . . .

> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or
>
> (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 [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.

Evidence in the record shows that the applicant entered the United States prior to April 1, 1997. The applicant remained in the United States until departing in May 1998. The record does not indicate that the applicant ever attained any legal status in the United States. She is therefore inadmissible for ten years from the date of her last departure. The applicant's inadmissibility under that section would have expired, except that the applicant reentered the United States illegally prior to the date of its projected expiration. The applicant therefore remains inadmissible pursuant to section 212(a)(9)(B)(i) of the Act.

Yet further, section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), states in pertinent part:

> . . . .
>
> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
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> (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.

The record demonstrates that the applicant reentered the United States without being admitted after having previously been unlawfully present for more than one year and after having been removed. The record contains no indication that the exception to inadmissibility contained at section 212(a)(9)(C)(ii) applies, and the AAO finds the applicant inadmissible pursuant to Section 212(a)(9)(C)(i) of the Act.

No waiver is available for inadmissibility under section 212(a)(9)(C)(i) of the Act. Because the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act and no waiver of that inadmissibility is available, no purpose would be served by addressing whether the applicant merits waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act or section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.