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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

[redacted]

H5

FILE: [redacted] Office: SACRAMENTO, CA Date: MAR 10 2010

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)

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, Sacramento, California 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and his parents are lawful permanent residents. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and parents.

The Acting Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Acting Field Office Director,* dated August 2, 2007.

On appeal, counsel asserts that the denial of the waiver was improper because United States Citizenship and Immigration Services (USCIS) did not adequately weigh the elements to establish extreme hardship to his qualifying relatives. *Form I-290B, Notice of Appeal or Motion.* Counsel also contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act as he timely retracted any misrepresentation he may have made. *Attorney's brief,* dated November 27, 2007.

The record reflects that the applicant entered the United States without inspection on March 18, 1984 and was apprehended by immigration authorities near Yuma, Arizona. *Form I-213, Record of Deportable Alien*, dated March 18, 1984. On March 22, 1984, the applicant was ordered deported and returned to Mexico. *Order to Show* Cause, dated March 19, 1984 with *Warrant of Deportation/Execute Deportation Order stamp*, dated March 22, 1984. On January 10, 2002 the applicant attempted to enter the United States by presenting a false Resident Alien Card to an immigration inspector at the San Ysidro port of entry. *Form I-213, Record of Deportable/Inadmissible Alien*, dated January 11, 2002. The applicant was referred to secondary inspection where he admitted to presenting the false document. *Form I-867A, Record of Sworn Statement*, dated January 11, 2002. On January 11, 2002 the applicant was ordered removed from the United States for a period of five years. *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated January 11, 2002. After being removed to Mexico, the applicant entered the United States without inspection four to six hours later. *Form I-215W, Record of Sworn Statement in Affidavit Form*, dated February 28, 2007.

Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act because he admitted to presenting a false Resident Alien Card during secondary inspection and thus, his misrepresentation was timely retracted. The AAO will not, however, consider whether the applicant is inadmissible for this misrepresentation as it finds the record to establish that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been removed in 1984 and 2002, 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)(II) 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). The record does not reflect that the applicant in the present matter has resided outside the United States for the required ten years. The applicant is, therefore, statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Accordingly, the AAO finds no purpose would be served in considering whether he is also inadmissible under section 212(a)(6)(C)(i) of the Act and, if so, his eligibility for a 212(a)(9)(B)(v) waiver. The appeal will be dismissed.

ORDER: The appeal is dismissed.