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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: FEB 24 2011

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 $630. 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, Los Angeles, California, rejected the Application for Waiver of Grounds of Inadmissibility (Form I-601) and it is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn and the application remanded for entry of a new decision.

The applicant is a native and citizen of Mexico who, on July 27, 1999, appeared at the San Ysidro, California port of entry. The applicant presented an I-586 border crossing card bearing the name [redacted] The applicant was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. The applicant admitted that she knew it was illegal to attempt to enter the United States by presenting the document. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and for being an immigrant without valid documentation. On July 27, 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).

On November 1, 2007, 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 her behalf by her lawful permanent resident spouse. The Form I-485 indicates that the applicant entered the United States without inspection on August 1, 1999. On November 1, 2007, 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), indicating that she continued to reside in the United States. On March 4, 2009, the Form I-601 was denied. The applicant filed a motion to reopen the Form I-601. On July 31, 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. She 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 her lawful permanent resident spouse and two U.S. citizen children.

The field office director determined that the applicant's Form I-601 was to be rejected because the applicant is inadmissibility under 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, ineligible for permission to reapply for admission and no purpose would be served in adjudicating the Form I-601. The field office director vacated the prior denial of the Form I-601 and rejected the Form I-601 accordingly. *See Field Office Director's Decision,* dated July 31, 2009.

On appeal, counsel contends that the field office director erred in rejecting the applicant's Form I-601 as it was properly filed. Counsel contends that: the Form I-601 is based upon extreme hardship to the applicant's spouse; it is a separate application from the Form I-212 and Form I-485; and the applicant is entitled to full adjudication of the Form I-601 on the merits. *See Counsel's Brief,* dated September 30, 2009. In support of her contentions, counsel submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) 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, 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.[1]

It is only appropriate to reject an application or petition when it is improperly filed. 8 C.F.R. § 103.2(a)(7)(i). The applicant's Form I-601 was not improperly filed since it was filed in conjunction with the Form I-485 and Form I-212, contained the appropriate filing fees, and there is no evidence that the applicant is currently outside the United States and required to file the Form I-601 and Form I-212 with the U.S. Consulate abroad. Accordingly, the AAO withdraws the decision of the field office director to reject the applicant's Form I-601 on the basis that the applicant is inadmissible under section 212(a)(9)(C) of the Act and no purpose would be served in adjudicating the Form I-601. The matter shall be remanded to the field office director for proper adjudication of the application.

ORDER: The field office director's decision is withdrawn. The application is remanded to the field office director for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.

[1] There are no indications in the record that the applicant is a VAWA self-petitioner.