identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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 Immigrationn Services

H5

[redacted]

DATE: JUL 13 2011 Office: SAN JOSE, CALIFORNIA FILE: [redacted]

IN RE: Applicant: [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:

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California. The decision 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 who was found to be inadmissible to the United States pursuant to 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 procure entry into the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her United States citizen spouse and children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated February 10, 2009.

On appeal, counsel asserts that the denial of the applicant's waiver request would result in extreme hardship to her spouse and family. See *Form I-290B* filed on March 4, 2009, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal; statements from the applicant, her spouse and her step-son; supporting statements from family and friends; copies of tax, wage and other financial documents; copies of bills; and copies of the applicant's daughter's medical records. The record also includes documents relating to the applicant's removal from the United States. The entire record was reviewed and considered in rendering this decision on the appeal.

In the present case, the record indicates that on April 18, 1998, the applicant applied for admission into the United States at San Ysidro port of entry. The applicant presented a valid Mexican passport with a counterfeit Form I-551 stamp in the passport. The applicant was denied entry into the United States. She was placed in Expedited Removal proceedings pursuant to section 235(b)(1) of the Act, and was removed from the United States on April 19, 1998. At the time of her adjustment interview, the applicant testified that she re-entered the United States on April 22, 1998, without being inspected and admitted or paroled and that she has remained in the United States. On February 25, 2008, the applicant filed a Form I-601 application and an Application to Register Permanent Resident or Adjust Status (Form I-485). On February 10, 2009, the Field Office Director denied the Form I-601 and the Form I-485 finding that the applicant had failed to establish extreme hardship to a qualifying relative.

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....

In that the applicant reentered the United States on April 22, 1996, without being inspected and admitted or paroled after having been removed from the United States pursuant to section 235(b)(1) of the Act, she is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act.

An alien who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not apply for consent to reapply for admission unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *Matter of Briones,* 24 I&N Dec. 355, 358-59 (BIA 2007). In the present case, the record does not reflect that the applicant has resided outside the United States for the required ten years. She is therefore, currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in examining the merits of her Form I-601 waiver application under section 212(i) of the Act. The appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely 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.