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

U.S. Citizenship and Immigration Services

[redacted]

#5

DATE: OCT 14 2011 OFFICE: CIUDAD JUAREZ, MEXICO [redacted]

IN RE: Applican[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) and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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, Ciudad Juarez, Mexico, 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 was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Also, the applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States.

The Field Office Director concluded 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. *See Decision of the Field Office Director*, dated May 14, 2009.

On appeal, counsel asserts that the Field Office Director erred and abused his discretion in denying the applicant's request for relief by not properly analyzing the relevant case law: hardship to the U.S. Citizen children also should have been taken into consideration and a favorable decision and exercise of discretion were warranted based on a totality of the circumstances. *Form I-290B, Notice of Appeal or Motion*, received June 9, 2009. Additionally, counsel asserts that the prior representative who assisted the applicant in preparing and filing the I-601 waiver does not appear to be an attorney and did not turn over the relevant file information to the applicant. *Id.* Accordingly, counsel would need time to review and analyze the Field Office Director's decision and to file a brief in support of the applicant's appeal. *Id.* Further, counsel asserts that the applicant reserves the right to submit additional arguments upon filing the brief in support of his appeal. *Id.*

The record includes, but is not limited to: Notice of Entry of Appearance as Attorney or Representative (Form G-28); Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130); a brief from counsel; two letters of support from the applicant's wife; residential mortgage statements; property tax statements; vehicle registrations; a business certificate; Red Cross certifications; police letters; and a Border Crosser card. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) 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.

The record reflects that, on or about March 20, 1997, the applicant attempted to enter the United States by presenting a border crossing card to U.S. immigration officials located at the port of entry in San Ysidro, San Diego, California. The border crossing card did not belong to the applicant; rather, it identified the owner as [redacted], born on December 25, 1975. Accordingly, the applicant was found to be inadmissible to the United States and ordered excluded by the Immigration Judge under section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i). Subsequently, on or about March 25, 1997, the applicant was removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

Based on the misrepresentation, the AAO finds the applicant is inadmissible under 212(a)(6)(C).

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

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

The record indicates that in or around January 1999, the applicant reentered the United States without permission from the U.S. government or inspection by U.S. immigration officials. Subsequently, on or about September 12, 2003, the applicant's spouse filed with the United States Citizenship and Immigration Services (USCIS) a Petition for Alien Relative (Form I-130), identifying the applicant as the spouse of a native-born United States citizen. The I-130 Petition also indicated that the applicant arrived in the United States without inspection in or around March 1996 and had never been under immigration proceedings. On or about July 21, 2004, USCIS approved the I-130 Petition. The record further indicates that the applicant last departed voluntarily from the United States in or around February 2008, and has remained outside the United States to date. The AAO notes that the Field Office Director in his decision indicates that the applicant last departed voluntarily from the United States in or around February 2005. *See Decision of the Field Office Director, supra.* Upon review of all relevant documentation, the AAO concludes that the applicant last departed voluntarily from the United States in or around February 2008. The applicant was unlawfully present from the time of entry without inspection until February 2008, a period of more than one year. The applicant is now seeking admission within 10 years of his February 2008 departure. Therefore, the AAO finds the applicant is inadmissible under 212(a)(9)(B)(i)(II).

The applicant through counsel does not contest the inadmissibility findings pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, and instead seeks a waiver of inadmissibility

pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to remain in the United States with his U.S. Citizen spouse and children.

Additionally, the record indicates that the applicant is further inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C) for having been ordered removed under section 235(b)(1) of the Act and entering the United States without permission or proper inspection by U.S. immigration officials. The AAO notes that the Field Office Director in his decision references the statutory language contained in section 212(a)(9)(C) of the Act; however, the Field Office Director does not analyze or make a final determination concerning the applicability of the applicant's particular circumstances in reference to the provisions contained in section 212(a)(9)(C) of the Act. *Id.*

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

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> (i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> ...
>
> (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 Attorney General [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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.
>
> (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.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant was ordered excluded and deported or about March 25, 1997. The record indicates that in or around January 1999, the applicant reentered the United States without permission or inspection by U.S. immigration officials, and resided in the United States until he voluntarily left for Mexico in or around February 2008. The applicant is therefore inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. §1182(a)(9)(C). An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless more than 10 years have elapsed since the date of the applicant's last departure from the United States. *See Matter of Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007); *see also Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). 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 during that time, and USCIS has consented to the applicant's reapplying for admission. *Matter of Briones*, 24 I&N Dec. at 358, 371; *Matter of Torres-Garcia,* 23 I&N Dec. at 873, *aff'd., Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). In the present matter, the applicant last left the United States in or around February 2008. As the applicant has not been outside the United States for a total of ten years, he is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i)(1) and 212(a)(9)(B)(v) 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, in that he has not shown that a purpose would be served in adjudicating his waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act due to his inadmissibility under section 212(a)(9)(C) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.