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

U.S. Citizenship and Immigration Services

#5

[redacted]

DATE: AUG 2 1 2012 OFFICE: LOS ANGELES, CALIFORNIA File: [redacted]

IN RE: Applicant: [redacted]

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 waiver application was denied by the Field Office Director, Los Angeles, 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 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and adult stepchildren.

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 March 5, 2009.

On appeal, counsel asserts that the applicant has met the standard required to show extreme hardship to his United States citizen spouse. *See Form I-290B, Notice of Appeal or Motion,* received April 3, 2009.

The record includes, but is not limited to: Form I-290B, counsel's appeal brief and earlier brief in support of the waiver; various immigration applications and petitions; a hardship letter; supporting letters from family and friends; a psychological evaluation; medical records; Mexico country-conditions printouts; divorce, marriage, birth records and family photos; employment, wage and tax records; and the applicant's inadmissibility and removal record. 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 the applicant attempted to enter the United States on January 3, 1998 by presenting the lawful permanent resident card of another individual as his own. Based on the foregoing, the Field Office Director found the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record reflects that when the applicant admitted on January 3, 1998 that he was attempting to enter the United States unlawfully, he was found to be inadmissible under section 212(a)(6)(C)(i) of the Act and was expeditiously removed from the United States on January 5, 1998, for a period of 5 years. *See Form I-213, Record of Deportable/Inadmissible Alien*; *Form I-860, Determination*

of Inadmissibility, Order of Removal, and Verification of Removal, dated January 5, 1998; and *Form I-867A and B, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act,* all dated January 5, 1998. *See also Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal*, received July 30, 2007. The record shows that despite the 5-year bar to entry, the applicant entered the United States without inspection later the same month. *See Form I-130, Petition for Alien Relative, (see C14)*, received April 30, 2001; *Form I-485, Application to Register Permanence or Adjust Status, (see Part I)*, received July 30, 2007; *Form I-601, Application for Grounds of Inadmissibility (see A11)*, received July 30, 2007. Accordingly, the AAO finds that the applicant is additionally inadmissible to the United States 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 thereafter without being admitted.[1]

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 has consented to the alien's reapplying for admission. . . . .

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See 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

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[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States *and* U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

In the present matter, the applicant is inadmissible under section 212(a)(9)(C) of the Act due to the fact that he was removed from the United States on January 5, 1998 for a period of 5 years, and he re-entered the United States without inspection a short time later. The record contains no evidence that the applicant has departed the United States after his January 1998 entry without inspection. The AAO notes that the Form I-130, signed by the applicant's spouse on April 25, 2001, indicates at Part C15 that the applicant had then been employed by [redacted] since July 1998. The AAO further notes that the applicant and the applicant's spouse were married on April 23, 2001 in Temple City, California. As the applicant has not been outside of 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 section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. §1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. The applicant in the instant case has not met that burden, in that he has not shown that a purpose would be served in adjudicating his waiver under section 212(i) 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. The applications will be denied.