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

[redacted]

H5

DATE: DEC 0 7 2012 OFFICE: SACRAMENTO, CA [redacted]

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)

[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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Inadmissibility (Form I-601) was denied by the 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 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 admission into the United States through fraud or the willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360). She 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 child and parents.

The applicant also was found inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. §1182(a)(9)(C)(i)(II), for entering the United States without admission after having been removed. The applicant must obtain consent from U.S. Citizenship and Immigration Services (USCIS) by filing a Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212), in order to overcome this inadmissibility.

In a decision dated August 4, 2011, the director determined the applicant had failed to establish that her lawful permanent resident mother and U.S. citizen stepfather would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Counsel asserts on appeal that that cumulative evidence establishes the applicant's lawful permanent resident mother and U.S. citizen stepfather will experience extreme hardship if the applicant is denied admission into the country. Counsel asserts further that the applicant qualifies for a waiver of her ground of inadmissibility under section 212(a)(9)(C) of the Act, because she experienced domestic abuse in Mexico; her pattern of abusive relationships led the applicant to enter the United States and become involved in an abusive marital relationship; and there is a direct psychological connection between the abuse the applicant suffered at the hands of her U.S. citizen husband and her illegal reentry into the United States.

In support of the assertions, counsel submits an article discussing abusive relationships, a letter from the applicant's mother, medical documents and birth certificate information, and financial evidence. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.- Any alien who-
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> . . .
>
> (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.
>
> (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.

The record reflects the applicant attempted to gain admission into the United States on July 5, 2002, by using a Form I-551, resident alien card issued in the name of another individual. [redacted] She informed U.S. immigration officers that her correct name was [redacted] and was expeditiously removed from the United States on July 6, 2002. According to the applicant's Form I-360, she unlawfully reentered the United States without admission on or around July 10, 2002. The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for reentering the United States without being admitted.

Counsel asserts that the applicant qualifies for a waiver under section 212(a)(9)(C)(iii) of the Act, because there was a direct psychological connection between the abuse she suffered at the hands of her U.S. citizen husband and the abuse she suffered in Mexico before her 2002 removal and illegal reentry into the United States. Counsel, however, submits no legal support for his assertion that a pattern of previous abuse not related to the basis of an applicant's Form I-360 may be considered the basis for establishing eligibility under section 212(a)(9)(C)(iii) of the Act.

The AAO notes that a waiver of inadmissibility under section 212(a)(9)(C)(i) of the Act is available only to individuals classified as battered spouses under the Violence Against Women Act of 1994 (VAWA)-based provisions of section 204 of the Act, 8 U.S.C. § 1154. The AAO notes further that under 8 C.F.R. 204.2(c)(1)(i), a self-petition by a spouse of an abusive citizen or lawful permanent resident may be filed under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant.

Since the applicant has an approved Form I-360, she is classified as a battered spouse and is eligible for consideration under section 212(a)(9)(C)(iii) of the Act. Statutory provisions of the Act reflect, however, that in order to meet the remaining requirements contained in section 212(a)(9)(C)(iii) of the Act, the applicant must establish that her unlawful reentry into the United States subsequent to removal was connected to her Form I-360 claim concerning her U.S. citizen husband. Additionally, the instructions to Form I-601 require VAWA self-petitioners to submit evidence establishing a "connection between the battery or extreme cruelty that is the basis for the VAWA claim" and the self-petitioners' removal and unlawful return or attempted unlawful return, and note that "[m]ere

assertions will not suffice." *See Instructions for Form I-601, Application for Waiver of Grounds of Inadmissibility*, p. 8 (rev. Nov. 23, 2010).

Statements made by the applicant in connection with her Form I-360 reflect that she met her U.S. citizen husband on November 3, 2004, more than two years after her removal and unlawful reentry into the United States. Accordingly, the applicant does not meet the requirements for a waiver based on her classification as a battered spouse under section 204 of the Act.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act, and does not meet the requirements for a waiver under section 212(a)(9)(C)(iii) of the Act may not apply for consent to reapply unless he or she has remained outside the United States for more than 10 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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 10 years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter the applicant is currently residing in the United States and therefore, has not remained outside the United States for 10 years since her last departure. She is currently statutorily ineligible to obtain permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(i) of the Act. The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.