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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: OFFICE: SAN FRANCISCO, CA FILE: [redacted]

IN RE: FEB 16 2012 [redacted]

APPLICATION: Application for Waiver 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Inadmissibility (Form I-601) was denied by the Field Office Director, San Francisco, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action consistent with this decision.

The record reflects the applicant is a native and citizen of Mexico who attempted to gain admission into the U.S. with a counterfeit lawful permanent resident document in February 1996. The applicant was ordered excluded and deported from the U.S. on this basis on February 22, 1996. He subsequently entered the U.S. without admission on or around March 1, 1996, and he has remained in the United States since that time. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for attempting to procure admission into the U.S. by fraud. He seeks a waiver of inadmissibility under section 212(i), 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen wife. The applicant is also inadmissible under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(A)(ii)(I), for having been ordered removed.

The director determined in a decision dated July 31, 2009, that because the applicant had not departed the U.S. since his unlawful entry in 1996, he was statutorily barred from seeking Form I-212, permission to reapply for admission until he remained outside of the U.S. for at least ten years, as set forth in section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II). As such, the director denied the applicant's waiver of inadmissibility claim in the exercise of discretion.

Counsel asserts on appeal that because the applicant's removal and reentry into the United States occurred prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA", Pub. Law 104–208, Sept. 30, 1996, 110 STAT. 3009–546), legal and federal court authority allow the applicant to apply for Form I-212, consent to apply for admission relief while he is in the United States. Counsel does not contest that the applicant attempted to gain admission into the U.S. in February 1996 by using a fraudulent document. Counsel stresses, however, that the applicant did not willfully misrepresent a material fact during his adjustment of status interview, and counsel asserts that if the applicant's Form I-212 is approved, his waiver application should be reconsidered and adjudicated on its merits.

The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was ordered excluded and removed from the United States on February 22, 1996. He subsequently reentered the U.S. without consent or admission on or about March 1, 1996, and he has remained in the U.S. since that time. The applicant's inadmissibility under section 212(a)(9)(A)(i) of the Act is not in dispute. Counsel asserts, however, that the applicant is not inadmissible or barred from seeking Form I-212, permission to reapply for admission under section 212(a)(9)(C)(i) of the Act, because he was removed, and reentered the U.S. prior to the enactment of the IIRIRA.

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

(i) [A]ny alien who-

. . .

> (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) [C]lause (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 he or she 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) and *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007). However, the provisions contained in section 212(a)(9)(C) of the Act do not apply to reentries made prior to the section's April 1, 1997 effective date. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs,* dated June 17, 1997.[1]

In the present matter, the applicant's removal and subsequent unlawful reentry into the U.S. occurred in 1996, before the April 1, 1997 effective date of IIRIRA. Accordingly, the applicant is not barred under section 212(a)(9)(C)(i)(II) of the Act from filing a Form I-212 from within the United States.[2]

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 does not reflect that the applicant willfully misrepresented a material fact during his adjustment of status interview. Exclusion and deportation documentation, as well as statements made by the applicant on immigration-related documents contained in the record clearly reflect that on February 18, 1996, the applicant attempted to gain admission into the U.S. using counterfeit lawful permanent resident documentation. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, and requires a waiver of this ground of inadmissibility.

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[1] "Section 212(a)(9)(C)(i)(II) of the Act applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997."

[2] It is noted that the applicant filed an appeal of his Form I-212 denial. The Form I-212 has been remanded to the director for issuance of a new decision addressing the merits of the application.

In the present case, the director erroneously denied the applicant's waiver of inadmissibility claim in the exercise of discretion, based on a finding that the applicant was statutorily barred from seeking Form I-212 permission to reapply for admission. Because no decision was issued on the merits of the applicant's Form I-601 claim, the case will be remanded to the director for issuance of a new decision. If the director's decision is adverse to the applicant, the decision shall be certified to the AAO for review in accordance with the requirements found at 8 C.F.R. § 103.4.

ORDER: The case is remanded to the director for further action consistent with this decision.