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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 Immigration Services

[redacted]

H5

DATE: JAN 2 5 2012 Office: LOS ANGELES, 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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who used the photo-substituted I-551 Border Crossing Card of another person in an attempt to enter the United States. The applicant was found to be inadmissible to the United States 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) April 30, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse would experience psychological, physical and emotional hardship due to the applicant's inadmissibility, and that the applicant and her spouse have been married thirty years and would suffer if she were removed from the United States. *Attachment, Form I-290B*, received June 1, 2009.

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

> (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 the applicant entered the United States without inspection in or about 1980, and remained until she departed the United States in 2001. She was unlawfully present from April 1, 1997, the Effective Date of the unlawful presence provision of the Act, until she departed the United States in 2001, a period over one year. The applicant attempted to re-enter the United States on March 28, 2007, but was detained, held inadmissible for using a photo-substituted Form I-551 card, and expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. *Form I-213, Record of Deportable/Inadmissible Alien*, dated May 5, 2001. The Field Office Director concluded that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) and then adjudicated the applicant's waiver to determine if she it met the extreme hardship standard.

However, as the applicant accrued a previous period of unlawful presence, from 1997 to 2001. She attempted to re-enter the United States in May 2001 with a photo-substituted Form I-551 card but was expeditiously removed. She then re-entered the United States without inspection in 2001. *See Form I-130*, Petition for Alien Relative, filed February 28, 2007, (stating that she entered without inspection in 2001). As such, she is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

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. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The applicant entered the United States without inspection in or about 1980, and remained until she departed the United States in 2001. She was unlawfully present from April 1, 1997, the effective date of the unlawful presence provision of the Act, until she departed the United States in 2001, a period over one year. She attempted to re-enter the United States in April 2001 using a photo-substituted I-551 of another person but was detained, declared inadmissible under section 212(a)(6)(C)(i) and expeditiously removed pursuant to section 235(b)(1) of the Act. The applicant then re-entered the United States without inspection and resumed her residence in Los Angeles.

As the applicant accrued unlawful presence over one year, departed the United States, then re-entered the United States without inspection, she is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. As the applicant was removed pursuant to section 235(b)(1) of the Act on May 28, 2001, and then re-entered the United States without inspection, she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act as well.

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 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 ten years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. The applicant is currently residing in the United States and therefore, has not remained outside the United States for 10 years since his last departure. She 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.

ORDER: The appeal is dismissed.