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U.S. Department of Homeland Security
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

H5

[redacted]

DATE: JUL 12 2012 OFFICE: LOS ANGELES, CALIFORNIA [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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application. The applicant, through counsel, appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. On June 1, 2009, counsel filed a motion to reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Mexico who was found by the District Director 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), for seeking to procure entry to the United States through willful misrepresentation. The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative, and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the District Director's decision on appeal.

On motion, counsel states that the evidence on the record and the supporting documentation submitted in support of the applicant's motion establish that the applicant's qualifying family member would suffer extreme hardship because of the applicant's inadmissibility. Thereby, counsel asserts that the previous decision by the U.S. Citizenship and Immigration Services (USCIS) should be reversed, and the relief sought by the applicant should be granted.

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

> (C) Misrepresentation.-
>
> > (i) In general.- 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.
> >
> > ...
> >
> > (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The District Director found the applicant inadmissible for attempting to procure admission to the United States on January 9, 1996, by presenting a nonimmigrant visa and Mexican passport that did not belong to her. On appeal, the AAO concurred that the applicant's misrepresentation was material and found that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. On motion, counsel does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

The record reflects 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 excluded under former section 212(a)(7)(A)(i)(I) of the Act and subsequently entering the United States without being admitted by U.S. immigration officials.[1]

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

> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
>
> ...
>
> (II) has been ordered removed under section 235(b)(1), section 240, or any 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.

"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." *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner*, dated June 17,

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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 District Director 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).

1997. The record reflects that the applicant was ordered excluded and deported by the Immigration Judge on January 22, 1996, for having presented the nonimmigrant visa and Mexican passport that did not belong to her, and she was removed from the United States on the same day. The record also reflects that the applicant subsequently entered the United States without permission or inspection by U.S. immigration officials around July 2000, and has remained to date. Therefore, the applicant remains subject to this provision of the Act because she was ordered excluded and removed, and her subsequent unlawful entry occurred after April 1, 1997. The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. §1182(a)(9)(C)(i)(II).

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 10 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 was removed from the United States on January 22, 1996, pursuant to an exclusion order, and subsequently entered the United States in July 2000 without permission or inspection by U.S. immigration officials. 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 thus currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(i) of the Act.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden. Accordingly, the motion will be granted and the previous decision of the AAO will be affirmed.

ORDER: The motion is granted. The previous decision of the AAO is affirmed.