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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

H5

[redacted]

Date: SEP 05 2012 Office: NEWARK 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 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.

FOR

Perry Rhew
Chief, Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Belize. The record indicates that on July 28, 1996 the applicant attempted to enter the United State claiming that he was a U.S. Citizen, born in St. Croix, Virgin Islands. The applicant was subsequently deported from the United States on July 29, 1996. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States through fraud or misrepresentation. The applicant did not contest this finding of inadmissibility, but rather sought a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. Citizen spouse.

The record indicates that, subsequent to his deportation on July 29, 1996, the applicant reentered the United States without inspection in December 1997. Thus, the applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(C)(i)(II) as an alien who was removed from the United States and who subsequently reentered the United States without being admitted.

The field office director found the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act, a ground of inadmissibility for which there is no waiver available. The district director denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 19, 2009.

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 of Homeland Security has consented to the alien's reapplying for admission.

Counsel asserts that the field office director erred in determining the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act because on July 29, 1996, the applicant was ordered excluded under the prior section 212(a)(6)(A) of the Act, which only required the applicant to remain outside of the United States for a period of one year. Contrary to this assertion, prior section 212(a)(6)(A) of the Act held that an alien who was excluded from admission and deported would require permission from the Attorney General to reapply for admission if the alien sought admission within one year of the date of deportation. In this particular case, the applicant did not apply for admission to the United States after his deportation, but rather reentered the United States in December 1997 without inspection, and therefore is subject to a separate ground of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Because the applicant stayed outside the United States for more than one year after his exclusion and deportation, he does not require permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act. However, his reentry without inspection triggered a separate ground of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Section 212(a)(9)(C)(i)(II) of the Act applies to unlawful reentry on or after the April 1, 1997 effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).[1]

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission 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). 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 for 10 years *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant is still in the United States, and will not be eligible to reapply for admission until he departs the United States, and remains outside the United States for more than 10 years. As such, no purpose would be served in adjudicating the applicant's waiver under section 212(i) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.

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[1] Section 212(a)(9)(C)(i)(II) of the Act renders inadmissible those aliens who have been ordered removed under sections 235(b)(1) or 240 of the Act, *or any other provision of law*, and who enter or attempt to reenter the United States without being admitted. 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 INS Memorandum*, "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)," June 17, 1997.