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



U.S. Citizenship
and Immigration
Services



H6

FILE:

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

NOV 23 2010

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Tariq Syed
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States.¹ The applicant is married to a United States citizen and the father to three United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen wife and children.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated April 15, 2006.

On appeal, the applicant claims that he gave all of his evidence of extreme hardship to his attorney, and he failed to file it with the waiver application. *Form I-290B*, filed May 19, 2008.

The record includes, but is not limited to, statements from the applicant's wife in English and Spanish²; letters from Mexican medical professionals in Spanish, a letter from [REDACTED] regarding the applicant's wife's medical condition, a letter from [REDACTED] regarding the applicant's daughter's medical condition, tax documents, and documents from the applicant's removal proceeding. The entire record was reviewed and considered, with the exception of the Spanish language documents, in arriving at a decision on the appeal.

In the present case, the record indicates that in April 1997, the applicant entered the United States without inspection. On May 26, 2005, an immigration judge granted the applicant voluntary departure. On the same day, the applicant voluntarily departed the United States. On or about September 1, 2008, the applicant entered the United States without inspection. On October 3, 2008, the applicant voluntarily returned to Mexico.

¹ The AAO notes that the applicant may also be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude. However, the AAO will not address the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act as the applicant is statutorily ineligible for a waiver at this time.

² Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant's wife and documents from Mexican medical professionals are in Spanish and are not accompanied by an English-language translation, the AAO will not consider them in this proceeding.

The applicant accrued unlawful presence from April 1997, the date he entered the United States without inspection, until May 26, 2005, the date an immigration judge granted the applicant voluntary departure. As the applicant is seeking admission to the United States within ten years of his May 26, 2005 departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Based on his reentry on or about September 1, 2008, the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted.³

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, only those individuals who have remained outside the United States for at least ten years since their last departure are eligible for consideration. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record does not reflect that the applicant in the present matter has resided outside of the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and the AAO finds no purpose would be

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center 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).

served in considering the merits of his Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.