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

U.S. Citizenship and Immigration Services

[redacted]

H6

Date: JUN 24 2011 Office: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [redacted]

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

Michael Kunnay

for Perry Rhew
Chief, Administrative Appeals Office

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

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 for more than one year and seeking readmission within 10 years of his last departure. The record further shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by willful misrepresentation. The applicant is also inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for having been ordered removed under section 235(b)(1) or section 240 and entering the United States without being admitted. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated March 4, 2008.

The applicant's wife asserted that she will endure hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Wife*, dated January 24, 2007.

The record contains a brief from counsel; a statement from the applicant's wife; a copy of the applicant's wife's lawful permanent resident card; a copy of the applicant's marriage certificate, and; copies of the applicant's son's naturalization and birth certificates. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> 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.

Section 212(i)(1) of the Act provides, in pertinent part:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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

(B) Aliens Unlawfully Present.-

(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.

. . . .

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

(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 record shows that the applicant entered the United States without inspection in or about 1977. He remained in the United States until approximately 1988, and he reentered the country without inspection in the same year. The applicant departed the United States on an unknown date, and then reentered without inspection on or about November 8, 1993. On November 12, 1993, the applicant was convicted of illegal entry to the United States under 8 U.S.C. § 1325, for which he was sentenced to 60 days of imprisonment. On January 7, 1994, the applicant was deported to Mexico. The record contains indications that the applicant reentered the United States without inspection in or about January 1997[1], December 1999[2], and 2000.[3] On December 9, 2002, the applicant's prior order of removal was reinstated, and he was removed to Mexico on December 20, 2002. The applicant again entered the United States without inspection on April 4, 2008. He was apprehended and removed to Mexico on April 9, 2008. On May 3, 2008, the applicant attempted to enter the United States by presenting a Form I-551 lawful permanent resident card that he purchased from another individual. On June 18, 2008, the applicant was convicted of illegally reentering the United States under 8 U.S.C. § 1326, for which he was sentenced to his time served in prison. The applicant was returned to Mexico.

The applicant seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his son on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. Due to his attempted entry with another individual's lawful permanent resident card, he is further inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by willful misrepresentation.

Additionally, the applicant is inadmissible under section 212(a)(9)(C) of the Act for having been ordered removed under section 235(b)(1) or section 240 and entering the United States without being admitted.

An applicant 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); *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 of the United States during that time, *and* that 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).

As discussed above, the applicant was removed on January 7, 1994 and December 20, 2002, and he subsequently reentered the United States without inspection on or about April 4, 2008. Thus, the applicant has not been out of the United States for a total of ten years since his last departure. Accordingly, he is currently statutorily ineligible to apply for permission to reapply for admission.

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[1] Notice of Intent/Decision to Reinstate Prior Order, dated December 9, 2002.
[2] Consular Memorandum, dated February 13, 2007.
[3] Form OF-194, (Visa) Refusal Worksheet, dated February 1, 2007.

The district director did not indicate that the applicant is inadmissible under section 212(a)(9)(C) of the Act. However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office 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).

As the applicant is statutorily ineligible to apply for permission to reapply for admission, no purpose would be served in adjudicating his waiver request under sections 212(a)(9)(B)(v) or 212(i) of the Act.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that he has not shown that a purpose would be served in adjudicating his waiver application under sections 212(a)(9)(B)(v) and 212(i) of the Act due to his inadmissibility under section 212(a)(9)(C) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.