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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]

H6

Date: AUG 0 1 2012 Office: MONTERREY, MEXICO FILE: [redacted]

[redacted]

IN RE: Applicant: [redacted]

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 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 waiver application was denied by the Field Office Director, Monterrey, 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. At the time of his appeal, the applicant was married to a U.S. citizen. The record indicates that his wife passed away on January 3, 2011. The applicant is the father of two U.S. citizen stepdaughters. 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 stepdaughters.

The Field Office Director found that the applicant established that extreme hardship would be imposed on the applicant's qualifying relative but denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on discretionary grounds. *Decision of the Field Office Director*, dated May 19, 2010. Additionally, the Field Office Director determined that the applicant was inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for being unlawfully present in the United States for an aggregate period of more than 1 year and attempting to reenter the United States without being admitted. *Id.* The Field Office Director found that because of his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, no waiver is available to the applicant. *Id.*

On appeal, the applicant's wife stated she has cancer, she was unable to work, and lost her job and home. *See letter from the applicant's wife*, dated May 30, 2010. She needed the applicant in the United States, because he took care of her, and she could not move to Mexico because of her medical treatments.

The record includes, but is not limited to, statements from the applicant, his wife, and his stepdaughters; letters of support; medical documentation for the applicant's wife; financial documents; household, utility, and medical bills; and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present case, the record indicates that in June 2003, the applicant entered the United States without inspection. In March 2009, the applicant departed the United States. On July 11, 2009, the applicant entered the United States without inspection. On July 16, 2009, the applicant was ordered expeditiously removed from the United States and was removed on the same day. On or about May 28, 2011, the applicant attempted to enter the United States without inspection. On May 29, 2011, his prior removal order was reinstated and he was removed from the United States. On or about August 11, 2011, the applicant attempted to enter the United States without inspection, his prior removal order was reinstated, and he was removed from the United States on October 13, 2011.

The AAO finds the applicant inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for being unlawfully present in the United States for more than 1 year and entering the United States without inspection. The applicant also is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed and entering the United States without inspection. The applicant does not dispute this finding.

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.
>
> (i) 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 [Secretary] has consented to the alien's reapplying for admission.

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. In the present matter, the applicant's last departure from the United States occurred on October 13, 2011, and therefore, he has not remained outside the United States for 10 years since his last departure. He 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(a)(9)(B)(v) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.