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U.S. Department of Homeland Security
U.S. 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

[redacted]

#6

DATE: JAN 2 5 2012 OFFICE: CIUDAD JUAREZ, MEXICO 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), and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Ciudad Juarez, Mexico, denied the waiver request and the consent to reapply for admission into the United States after removal, and are 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States through fraud or misrepresentation. He also was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of 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 admission within 10 years of his last departure from the United States. And, he was found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed from the United States and seeking admission within the proscribed period since his last removal. The applicant is the spouse of a Lawful Permanent Resident and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest these findings of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), as well as permission to reapply for admission into the United States after removal pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), in order to reside in the United States with his Lawful Permanent Resident spouse and their children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) accordingly. *See Decision of Field Office Director, Ciudad Juarez, Mexico*, dated February 3, 2009.

On appeal, the applicant indicates that the documentary evidence shows that his Lawful Permanent Resident spouse will suffer extreme medical and financial hardship because of his inadmissibility. *See Form I-290B, Notice of Appeal or Motion*, dated February 22, 2009; *see also Letter of Support from* [redacted] dated February 19, 2009.

The record includes, but is not limited to: a letter of support from the applicant; letters of support from the applicant's spouse, children, and grandchild; identity documents; medical documents; and financial documents and bills. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.
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> ...

(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 record reflects that the applicant attempted to enter the United States on November 7, 2005, by presenting a Border Crossing Card (Laser Visa) to U.S. immigration officials located at the port of entry in El Paso, Texas. The Laser Visa did not belong to the applicant; rather, it identified the owner as [redacted]. Accordingly, the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record further reflects that the applicant also attempted to enter the United States on June 24, 2009, by presenting an altered Mexican passport and a counterfeit non-immigrant visa to U.S. immigration officials located at the San Ysidro port of entry in San Diego, California. The U.S. immigration officials permitted the applicant to withdraw his request for admission into the United States, and the applicant voluntarily returned to Mexico. The record further reflects that the applicant attempted to enter the United States without inspection on July 2, 2009. As the applicant misrepresented his identity in seeking to procure admission to the United States, the AAO finds that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(9)(B) 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 [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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection by U.S. immigration officials in or around July 1998 and remained until on or about November 1, 2005, when he voluntarily departed to Mexico. The applicant accrued unlawful presence from in or around July 1998 until on or about November 1, 2005, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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

> (A) Certain aliens previously removed.-
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> > (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
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> > ...
> >
> > (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

As discussed previously, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act on November 7, 2005. As the applicant was ordered removed under section 235(b)(1) more than five years ago, he is no longer inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. §1182(a)(9)(A)(i).

However, the record reflects that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for an aggregate period of more than one year and attempting to reenter the United States without permission or proper inspection by U.S. immigration officials, and section 212(a)(9)(C)(i)(II) of

the Act, for having been removed under section 235(b)(1) of the Act and attempting to reenter the United States without being admitted.[1]

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

> (C) Aliens unlawfully present after previous immigration violations.-
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> (i) In general.-Any alien who-
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> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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> (II) has been ordered removed under section 235(b)(1), section 240, or any provision of law,
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> and who enters or attempts to reenter the United States without being admitted is inadmissible.
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> (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.

As discussed previously, the applicant was unlawfully present in the United States for a period in excess of one year. Also, the record reflects that on July 2, 2009, the applicant was apprehended by U.S. immigration officials while he was attempting to reenter the United States without inspection with two other individuals. Thereby, the applicant attempted to reenter the United States without being admitted after having been unlawfully present and after his expeditious removal pursuant to section 235(b)(1) of the Act on November 7, 2005. The applicant is therefore inadmissible under sections 212(a)(9)(C)(i)(I) and (II) of the Act, 8 U.S.C. §§1182(a)(9)(C)(i)(I) and (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

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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 Field Office 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).

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 last left the United States in or around November 2007 to attend his immigrant visa interview at the American Consulate General in Ciudad Juarez, Mexico. As the applicant has not been outside the United States for a total of 10 years, 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 sections 212(i) and 212(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 under sections 212(i) and 212(a)(9)(B)(v) 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.