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

H6

[redacted]

DATE: NOV 0 7 2012 Office: JACKSONVILLE, FL FILE: [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:

[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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Jacksonville, Florida (director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application will not serve to waive the applicant's inadmissibility grounds, and its approval would serve no purpose.

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 one year or more and seeking readmission within ten years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his family.

The director concluded that that the applicant failed to establish his qualifying relatives would experience extreme hardship and denied the application accordingly. *See Decision of Field Office Director* dated January 20, 2011.

On appeal, counsel contends that the adjudicating officer erred in determining that the appellant had accrued unlawful presence of more than one year and that the applicant has not established extreme hardship to a qualifying relative.

Section 212(a)(9)of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or
>
> (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.

Based on the record, the applicant entered the United States without inspection on or about January 6, 1998, and remained in the United States in unlawful status. The applicant was subsequently placed in removal proceedings and the immigration judge granted him voluntary departure pursuant to § 240B of the Act in lieu of removal by an immigration judge. The applicant was ordered by the court to depart the United States by March 18, 1999, or by the date of any extensions granted. Pursuant to the grant of voluntary departure, the applicant left the United States on or about March 12, 1999. Accordingly, the applicant accrued unlawful presence from

the date of his January 6, 1998 entry without inspection until his March 18, 1999 departure from the United States, a period of more than one year.

Although the AAO notes that counsel, on appeal, asserts that the adjudicating officer erred in finding the applicant to have accrued more than one year of unlawful presence prior to his 1999 departure from the United States, counsel fails to provide any analysis of this position within the appellate brief. Therefore, the AAO will not consider counsel's claim on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009) (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal).

Section 212(a)(9)(C)(i) of the Act provides:

> 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
> >
> > (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.
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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.

The record reflects that after departing the United States pursuant to the grant of voluntary departure, the applicant reentered the United States without being admitted in the month of April 1999. Accordingly, he is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must remain outside the United States for at least ten years following his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record in the present matter does not establish that the applicant has resided outside the United States for the required ten years. Accordingly, he is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(ii) of the Act.

As the applicant is not eligible for an exception from his section 212(a)(9)(C)(i) inadmissibility, the AAO finds no purpose would be served in considering the merits of his Form I-601 waiver application.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.