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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 15 2013 Office: CIUDAD JUAREZ, MEXICO 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

The record reflects that the applicant, a native and citizen of Mexico, 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 a period of more than one year. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S. citizen spouse.

The Field Office Director found that the applicant accrued unlawful presence in the United States in excess of one year prior to her departure on December 23, 2007, and subsequently re-entered the United States without inspection in January 2008. The Field Office Director therefore found the applicant 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 subsequently entering the United States without being admitted. As 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, the Field Office Director found that there is no wavier currently available to the applicant and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated May 20, 2013.

On appeal, counsel contends that the applicant did not accrue unlawful presence in excess of one year prior to her departure in December 2007 and submits evidence that the applicant was in Mexico in August 2007. Counsel concedes that the applicant re-entered the United States in January 2008 without inspection but also asserts that the applicant returned to Mexico later that year, resulting in her unlawful presence for a period of less than one year.

The record includes but is not limited to the following documentation: Form I-290B, Notice of Appeal or Motion, a copy of the applicant's Mexican marriage certificate, a brief filed by counsel in support of Form I-601, and a statement by the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> 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.
>
> . . . .
>
> (v) Waiver. – The Attorney General [now 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 [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.

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

> Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.
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> 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 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] has consented to the alien's reapplying for admission.

The record shows that on April 28, 2006, the applicant was issued a non-immigrant border crossing card (BCC), which she used to travel to the United States. On December 23, 2007, as the applicant was returning to Mexico, U.S. Customs and Border Protection (CBP) in an outbound operation inspected and questioned her. The applicant presented her BCC and said that she had been working as a baby sitter for her cousin in Chicago for the past six months. Her cousin compensated her by buying her clothing and other articles. The applicant's BCC then was cancelled and she returned to Mexico.

On September 7, 2012, the U.S. Consulate in Ciudad Juarez, Mexico, interviewed the applicant in conjunction with her visa application based on the immigrant-visa petition filed by her U.S. citizen husband. According to the record, the applicant claimed during this interview that she entered the United States with her BCC in August 2006 intending to visit and decided after two months to remain in the United States in violation of the terms of her visa. The applicant informed the consular officer that she stayed in the United States until December 2007, a period in excess of one year. The applicant also stated that she has remained in Mexico since December 2007.

On the applicant's Form I-601, she stated that she was inadmissible, accruing unlawful presence after entering the United States without inspection in January of 2008 until she returned to Mexico in December 2008. The applicant also claims she was present in the United States in valid non-immigrant status between August 2007 and December 2007.

On appeal, counsel submits a copy of the applicant's marriage certificate, which shows that she was married on August 2, 2007 in Mexico. Counsel also asserts that the applicant's original entry into the United States was after her wedding in August 2007. Counsel concedes that CBP officers interviewed the applicant and took her Form I-94, Arrival/Departure Record, in December 2007, as the applicant was leaving the United States, and that she re-entered a month later without inspection, in January 2008.

The Field Office Director determined that after accruing one year of unlawful presence in the United States, the applicant re-entered the United States without inspection in January 2008. However, the record does not clearly establish that the applicant accrued unlawful presence in the United States before January 2008. The applicant's marriage certificate shows that she was in Mexico in August 2007. Agency records indicate that between August 13, 2006 and August 7, 2007, the applicant was admitted into the United States with her BCC seven times. The record does not show that the applicant overstayed her period of admission after these seven entries. Moreover, without evidence that the applicant was unlawfully present in the United States for an aggregate period of more than one year before her unlawful entry in January 2008, she cannot be found to be inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The matter is remanded for the Field Office Director to determine whether the applicant accrued unlawful presence in the United States prior to December 23, 2007.

The applicant states on her Form I-601 that she was unlawfully present in the United States from January 2008 until December 2008, a period of less than one year. The applicant therefore was inadmissible for a period of three years, pursuant to section 212(a)(9)(B)(i)(I) of the Act. She is no

longer inadmissible under this section of the Act, however, because she is seeking admission to the United States after residing outside the United States for the required three-year period following her departure in 2008.

The matter also is remanded to the Field Office Director to determine whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact in order to gain an immigration benefit. The record shows that the applicant told a U.S. consular officer that she had not left Mexico after she returned in December 2007; on her Form I-601, however, she stated that she re-entered the United States without inspection in January 2008. Furthermore, the applicant told the consular officer that although she entered the United States as a non-immigrant using her BCC, she subsequently decided to remain in the United States. Should the Field Office Director find these statements constitute material misrepresentations made to a U.S. government official for immigration benefits, the applicant also would be inadmissible under section 212(a)(6)(C)(i) of the Act.

The matter is remanded to the Field Office Director to determine whether the applicant accrued unlawful presence in the United States for a period in excess of one year prior to January 2008 and whether she also may be inadmissible under section 212(a)(6)(C)(i) of the Act.

ORDER: The matter is remanded to the Field Office Director for further action as described above.