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

(b)(6)

[redacted]

Date: MAR 2 6 2014 Office: NEBRASKA SERVICE CENTER [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and the matter 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 Act for having been unlawfully present in the United States for more than one year, and section 212(a)(9)(C) of the Act for reentering the United States without being admitted after being unlawfully present for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and children in the United States.

The director found that the applicant is ineligible to obtain consent to reapply for admission to the United States because he has not remained outside the United States for at least ten consecutive years and denied the applicant's waiver application as a matter of discretion.

On appeal, the applicant's wife states that the decision indicates that her husband entered the United States in 1999 without inspection and submits a copy of her husband's border crossing card that expired on September 5, 2007. The applicant's wife contends that she and her children need the applicant back in their lives.

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

> (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.

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.

(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.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

In this case, the applicant states on his Form I-601 that he lived in the United States from January 1999 until August 2012 "without insp."[1] The record shows that the applicant was granted voluntary

[1] The record indicates that the applicant did not continuously reside in the United States during this time period. According to a Record of Deportable Alien (Form I-213) in the record, the applicant entered the United States on November 15, 2001, and was arrested for driving while intoxicated on December 12, 2001. *Record of Deportable Alien (Form I-213)*, dated February 20, 2002. The applicant was subsequently granted voluntary return to Mexico and departed the United States on February 21, 2002. According to another Form I-213 in the record, on June 30, 2008, the applicant was again arrested for driving while intoxicated and stated he last entered the United States illegally in 2002

departure by an Immigration Judge on April 30, 2012, and that the applicant departed the United States on August 25, 2012. The record also shows that the applicant entered the United States on April 27, 2013, by crossing the [redacted] *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated April 30, 2013. The applicant conceded he did not possess any immigration documents that would allow him to enter or remain in the United States legally and that he did not have any petitions filed on his behalf. *Id.* The applicant was placed in expedited removal proceedings and ordered removed on April 30, 2013. *Notice and Order of Expedited Removal (Form I-860)*, dated April 30, 2013. The applicant was removed from the United States on June 25, 2013. *Notice to Alien Ordered Removed/Departure Verification (Form I-296)*, dated June 25, 2013. In addition, the record shows the applicant again entered the United States on July 31, 2013, by raft across the [redacted] Port of Entry. The applicant was arrested, his prior removal order was reinstated, and he was subsequently removed from the United States on September 14, 2013. *Notice of Intent/Decision to Reinstate Prior Order (Form I-871)*, dated July 31, 2013; *Warrant of Removal/Deportation (Form I-205)*, dated July 31, 2013.

Therefore, the record shows that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission within ten years of his departure. In addition, the applicant is inadmissible to the United States pursuant to sections 212(a)(9)(C)(i)(I) and (II) of the Act as an alien who has been unlawfully present in the United States for more than one year and who has been ordered removed, and who reentered the United States without being admitted. To the extent the applicant's wife submits a copy of her husband's border crossing card showing an expiration date of September 5, 2007, there is no evidence he used the card to enter the United States in 1999 as the applicant's wife suggests, and even if he did, he nonetheless began to accrue unlawful presence after the 30-day period of authorized stay. Moreover, it is uncontested the applicant was ordered removed and reentered the United States without being admitted two times in 2013. Therefore, the applicant is inadmissible to the United States pursuant to sections 212(a)(9)(C)(i)(I) and (II) of the Act. There is no evidence in the record that the applicant is a VAWA self-petitioner and, therefore, there is no waiver available for this additional ground of inadmissibility.

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 ten 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); *see also Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, the BIA has held that 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.

---

nea[redacted]. *Form I-213*, dated July 1, 2008. Therefore, although it appears the applicant resided in the United States from 2002 until his removal in 2012, the applicant's immigration history prior to 2002 is unclear.

In this case, the applicant's last departure from the United States was on September 14, 2013, less than ten years ago. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. The appeal of the denial of the waiver application is dismissed as a matter of discretion as its approval would not result in the applicant's admissibility to the United States.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.