



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO

Date: JUN 07 2006

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the
Immigration and Nationality Act, 8 U.S.C. §§ 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application. The matter 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 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). The applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 5, 2002.

On appeal, counsel contends that the district director erred in finding the applicant inadmissible pursuant to sections 212(a)(7)(i)(I) and 212(a)(6)(A) of the Act, 8 U.S.C. §§ 1182(a)(7)(i)(I) and 1182(a)(6)(A) because the applicant is eligible to adjust her status pursuant to section 245(i) of the Act, 8 U.S.C. § 1255(i). *Applicant's Brief*, dated September 11, 2002. Counsel also contends that the applicant's husband would experience extreme hardship if the applicant were to be removed to Mexico and the applicant warrants a favorable exercise of discretion. In support of these assertions, counsel submitted the above-referenced brief, medical documentation for the applicant, documentation in regard to home ownership, an employment letter for the applicant's spouse, tax returns, photographs of the family, country condition information for Mexico and copies of documents previously submitted. 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) 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.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

Section 212(a)(9) of the Act provides, 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 has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The record in the instant case reflects that, on February 24, 1998, the applicant attempted to enter the United States by eluding inspection at the San Ysidro, California, Port of Entry. The applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, for being an immigrant alien without a valid immigrant visa. When questioned, the applicant failed to provide her true name. Consequently, on February 26, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) under the name "Norma Marquez-Gomez." The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for

admission, on an unknown date, but prior to January 10, 1999, the date on which she gave birth to her daughter in Chicago, Illinois.

The district director based his finding of inadmissibility on the applicant's admission to, and records documenting, her attempt to elude inspection, providing a false name upon apprehension by immigration officers and reentering the United States without being admitted or paroled. Counsel contends that the district director erred in finding the applicant inadmissible pursuant to sections 212(a)(7)(i)(I) and 212(a)(6)(A) of the Act, for being an immigrant without valid entry documents and an alien present in the United States without being admitted or paroled, because she is eligible for adjustment pursuant to section 245(i) of the Act. The AAO finds that counsel's contentions in regard to inadmissibility under sections 212(a)(7)(i)(I) and 212(a)(6)(A) of the Act are correct. Section 245(i) of the Act permits certain aliens who are present within the United States without being admitted or paroled to adjust status within the United States without being subject to sections 212(a)(7)(i)(I) and 212(a)(6)(A) grounds of inadmissibility. However, section 245(i) of the Act requires that an alien be otherwise admissible to the United States and does not waive the other grounds of inadmissibility, discussed below, to which the applicant is subject.

The AAO finds that the applicant is statutorily ineligible for a waiver pursuant to section 212(a)(9)(C)(i)(II) of the Act at this time. The AAO notes that an exception to this ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

The AAO finds that since the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, she must receive permission to reapply for admission (Form I-212). An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed 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). 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 *and* that Citizenship and Immigration Services (CIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on February 26, 1998, less than ten years ago. She is currently statutorily ineligible to apply for permission to reapply for admission.

Inasmuch as the applicant is inadmissible and there is no waiver available for inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, until 10 years after her last departure, no purpose would be served in discussing whether the alien is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act or whether she is eligible for a waiver pursuant to section 212(i) of the Act. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.