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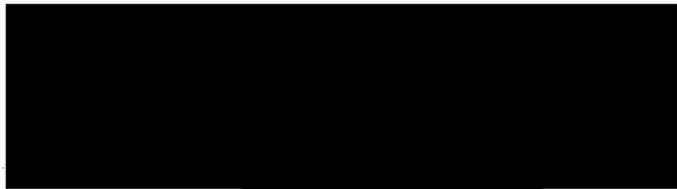
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



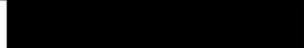
U.S. Citizenship  
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FILE:



Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: NOV 04 2009

(CDJ 2004 729 180)

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Mexico City, Mexico and 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 is inadmissible to the United States 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 readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and their child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated August 30, 2006.

On appeal, the applicant contends that an injustice has occurred and that he is needed by his family. *Form I-290B*.

The record reflects that the applicant entered the United States without inspection in April 1996 and remained until October 2005, when he voluntarily departed the United States. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated November 7, 2005. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in October 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his October 2005 departure from the United States. The applicant is, therefore, 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 more than one year.

On September 6, 2008, the applicant entered the United States without inspection and was apprehended by immigration authorities near Columbus, New Mexico. *Form I-213, Record of Deportable/Inadmissible Alien*, dated September 6, 2008. Accordingly, the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted.

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, only those individuals who have remained outside the United States for at least ten years since their last departure are eligible for consideration. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).<sup>1</sup> The record does not reflect that the applicant in the present matter has resided outside of the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and the AAO finds no purpose would be served in considering the merits of his Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO takes note of the preliminary injunction that was previously entered against the ability of the Department of Homeland Security (DHS) to follow *Matter of Torres-Garcia*. *Gonzales v. DHS*, 239 F.R.D. 620 (W.D. Wash. 2006). The Ninth Circuit, however, reversed the district court, and ordered the vacating of that injunction. *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007). In its opinion, the Ninth Circuit held that the Board's decision in *Matter of Torres-Garcia* was entitled to judicial deference. *Gonzales II*, 508 F.3d at 1241-42. The Ninth Circuit's mandate issued January 23, 2009. On February 6, 2009, the district court denied the plaintiffs' motion for a new preliminary injunction. Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt # 59), *Gonzales v. DHS*, No. C06-1411-MJP (W.D. Wash. Filed February 6, 2006). Thus, as of the date of this decision, there is no judicial prohibition in force that precludes the AAO applying the rule laid down in *Matter of Torres-Garcia*.