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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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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date:

JAN 22 2010

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility

ON BEHALF OF APPLICANT:

[REDACTED]

**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 waiver application was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico, and the spouse of a naturalized U.S. citizen. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C), for having been ordered removed under section 235(b)(1) of the Act, and reentering the United States without being admitted. The applicant seeks a waiver of this ground of inadmissibility.

The Field Office Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the denial of the applicant's waiver application would result in extreme hardship to her spouse and children. Counsel states that factors representing extreme hardship include the applicant's spouse's anxiety and depression, the applicant's son's serious medical conditions, and economic hardships. Counsel states that when analyzed in the aggregate the factors constitute hardship that would be extreme in nature.

In support of the application, the record contains, but is not limited to, the applicant's spouse's naturalization certificate, the applicant's marriage certificate, the applicant's children's birth certificates, the applicant's spouse's affidavit, employment attestations, medical documentation, financial documentation, a letter from the applicant's pastor, and a letter confirming the applicant's children's school enrollment. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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....

The director determined that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on May 27, 1999, she was arrested by the legacy Immigration and Naturalization Service Border Patrol in Nogales, Arizona and was charged with having an impostor I-586 (Border Crossing Card) and placed in expedited removal proceedings. The record shows that prosecution was declined and the applicant was immediately removed from the United States. Section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), provides for the expedited removal of arriving aliens who are inadmissible to the United States under section 212(a)(6)(C) of the Act, for the willful misrepresentation of a material fact, or under section 212(a)(7), for failure to possess a valid travel document.

The applicant indicated on her Application to Adjust Status (Form I-485), filed August 17, 2000, that she last entered the United States without inspection in January 1994. This statement is inconsistent with the FBI report, which shows that she was removed from the United States on May 27, 1999. The applicant's presence in the United States in August 2000, and her failure to demonstrate that she reentered the United States with a valid visa or other travel document, indicates that she reentered the United States without inspection after she was ordered removed under section 235(b)(1) of the Act. The AAO therefore concurs with the director's finding that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C) of the Act, an applicant must file an Application for Permission to Reapply for Admission into the United States (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). The record does not reflect that the applicant in the present matter has resided outside of the United States for the requisite ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C) of the Act.

The AAO notes that the director adjudicated the applicant's waiver application under section 212(i) of the Act, 8 U.S.C. § 1182(i), the waiver provision for the ground of inadmissibility under section 212(a)(6)(C) of the Act. The only information contained in the record regarding the applicant's possible inadmissibility under section 212(a)(6)(C) of the Act is the FBI report, which states that she was charged with an impostor border crossing card. However, the prosecution for this charge was declined and no other information is in the record regarding the circumstances surrounding her expedited removal. Therefore, based on the record, the AAO cannot affirm the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act. Moreover, no purpose would be served in considering the merits of the applicant's Form I-601 waiver application under section 212(i) of the Act since the applicant remains inadmissible under section 212(a)(9)(C) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the application will be denied.

**ORDER:** The appeal is dismissed and the application is denied.