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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



H₂

Date: JUN 08 2011 Office: ATHENS, GREECE FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. 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 Lebanon who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated December 12, 2008.

On appeal, the applicant contends, *inter alia*, that the petty offense exception applies to her case and that she established the requisite hardship.

After a careful review of the record, the AAO finds that the applicant is ineligible for a waiver. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.

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. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Gonzales v. Dep't of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). 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, the applicant has remained outside the United States, and the United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

In this case, the record shows, and the applicant does not contest, that she entered the United States on January 4, 1998, using a non-immigrant visa for pleasure with authorization to stay until December 3, 1998. The record also shows, and the applicant does not contest, that she remained in the United States until her departure in January 2008. Therefore, the applicant was unlawfully present in the United States for an aggregate period of more than one year. Moreover, United States Citizenship and Immigration Services (USCIS) records show that, subsequent to filing the instant appeal, the applicant reentered the United States without inspection on or about October 29, 2009 and that she has an a hearing scheduled with an Immigration Judge on March 5, 2012 under another alien number, [REDACTED]. Therefore, the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The applicant's last departure from the United States occurred in January 2008 and she is currently residing in the United States. Thus, she has not remained outside the United States for ten years since her last departure. Accordingly, she is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), and the appeal must be dismissed as moot.

The AAO further notes that the record indicates the applicant's husband, [REDACTED] has an immigration hearing on June 11, 2012. Should [REDACTED] status as lawful permanent resident be revoked at that hearing, the Petition for Alien Relative (Form I-130) he filed on behalf of his wife,

the applicant, will no longer be valid and there would be no underlying petition to support the waiver application.

ORDER: The appeal is dismissed.