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



U.S. Citizenship
and Immigration
Services

DATE: APR 03 2013

OFFICE: LOS ANGELES, CALIFORNIA

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal line extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(i)(I), for having been convicted of crimes involving moral turpitude, and under 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 10 years of his last departure. The applicant seeks a waiver of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse, adult children and grandchildren.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated October 7, 2010.

On appeal, counsel asserts that the applicant has established that his spouse will suffer extreme hardship if a waiver is not granted. *See Counsel's Appeal Brief*, received November 9, 2010.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; counsel's earlier brief in support of a waiver; various immigration applications and petitions; a hardship declaration; statements by the applicant; a psychological report; financial records; birth, marriage and divorce certificates and family photos; country conditions reports for Bolivia; documents pertaining to the applicant's deportation and removal proceedings, appeals and voluntary departure; and documents pertaining to the applicant's criminal record and history. The entire record was reviewed and considered in rendering this decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(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.

The applicant indicates that he first entered the United States in or about March 1973 on a B-2 visa, received one extension, overstayed the temporary period authorized, and departed voluntarily to Bolivia in December 1980 for a 35-day holiday. The applicant entered the United States either without inspection or on a B-2 visa in January 1981 and remained until about May 24, 2001 when he departed to Bolivia pursuant to a grant of voluntary departure by the former Immigration and Naturalization Service ("INS"). The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions under the Act, to November 29, 2000, the date of the voluntary departure grant by INS, a period in excess of one year. As the applicant is seeking admission to the United States within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The applicant does not contest inadmissibility and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record shows that on or about June 2, 2001, approximately one week after his voluntary departure, the applicant entered the United States without inspection and has remained ever since. As the applicant accrued unlawful presence in the United States from April 1997 to November 2000, subsequently entered the United States without inspection in or about June 2001, and has remained unlawfully thereafter, the AAO finds that in addition to his other inadmissibility grounds, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), as an alien unlawfully present after previous immigration violations.

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 has consented to the alien's reapplying for admission.

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). 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 U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the record shows that the applicant departed the United States in or about May 2001, pursuant to a November 2000 grant of voluntary departure. The applicant subsequently entered the United States without inspection approximately one week later on or about June 2, 2001 and has remained in the United States ever since. Accordingly, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant has not been outside of the United States for a total of 10 years following his last departure, he is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in determining whether he qualifies for a waiver under sections 212(a)(9)(B)(v) and 212(h) of the Act.

Section 291 of the Act, 8 U.S.C. §1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. The applicant in the instant case has not met that burden, in that he has not shown that a purpose would be served in adjudicating his waiver application under sections 212(a)(9)(B)(v) and 212(h) of the Act due to his inadmissibility under section 212(a)(9)(C) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.