



**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **JUL 20 2015**

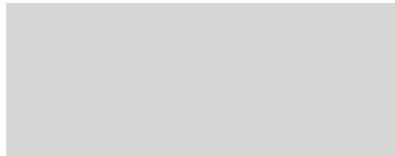
FILE:

APPLICATION RECEIPT:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Atlanta, Georgia, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is unnecessary.

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without inspection on or about May 5, 2005, through Arizona. On November 13, 2012, the applicant submitted an Application for Waiver of Grounds of Inadmissibility (Form I-601) indicating that she is subject to the 10-bar to admission because she has been unlawfully present in the United States for more than three years.

The field office director determined that the applicant is inadmissible and had failed to establish that a qualifying relative would suffer extreme hardship due to her inadmissibility. The waiver application was denied accordingly. *Decision of the Field Office Director*, dated May 29, 2013.

In that decision the field office director cites waiver requirements under Section 212(i) of the Act, which provides a waiver for inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The decision also cites inadmissibility under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and indicates a waiver for this inadmissibility is dependent on showing extreme hardship on a qualifying relative under section 212(h) of the Act, 8 U.S.C. § 1182(h). The narrative of the decision indicates that the applicant has been in the United States for more than three years since entering without inspection.

On appeal the applicant has not contested a finding of inadmissibility but asserts that the finding that she has not established extreme hardship to her spouse is in error. With the appeal the applicant submits additional evidence including affidavits, financial documentation, a mental health evaluation of the applicant's spouse, a psychiatric evaluation of the applicant's daughter, and country information for Mexico. The entire record was reviewed and considered in rendering this decision.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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.

There is no evidence in the record that the applicant procured or attempted to procure admission into the United States or other benefit through fraud or misrepresentation.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

There is no evidence in the record that the applicant has been convicted of a crime involving moral turpitude or violated any law or regulation related to a controlled substance.

In her waiver application the applicant indicates that she is inadmissible because she entered the United States without inspection and has been present for more than three years.

Section 212(a)(9)(B) 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.

An alien must depart the United States after accruing more than one year of unlawful presence in order to trigger the 10-year bar to admission. *See Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009.

There is no evidence in the record that the applicant has left the United States since her arrival in May 2005. As noted above, section 212(a)(9)(B) of the Act requires that the applicant leave the United States before she is found to be inadmissible for unlawful presence.

As the record does not indicate that the applicant is inadmissible for having sought admission to the United States through fraud or misrepresentation, having been convicted of a crime involving moral turpitude or having a controlled substance violation, or having been unlawfully present for one year

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or more and seeking admission within 10 years of departing the United States, the Form I-601 is unnecessary, and the appeal will therefore be dismissed.¹

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.

¹ We note that that applicant will become inadmissible under section 212(a)(9)(B)(i) of the Act if she departs the United States. If she seeks an immigrant visa based on her approved I-130 petition, she may file a Form I-601, Application for Waiver of Grounds of Inadmissibility, only after being interviewed and found inadmissible by a consular officer. A Form I-601 may be filed by immigrant visa applicants who are outside the United States who have had a visa interview with a consular officer and have been found to be inadmissible. *See Instructions for Application for Waiver of Grounds of Inadmissibility.* Furthermore, certain immediate relatives of U.S. Citizens may file an Application for Provisional Unlawful Presence Waiver (Form I-601A) under Section 212(a)(9)(B) of the Act and 8 CFR 212.7(e) before departing the United States to appear for an immigrant visa interview. *See Instructions for Application for Provisional Unlawful Presence Waiver (Form I-601A).*