

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H3

FILE: [REDACTED] Office: CHICAGO Date:

IN RE: [REDACTED]

MAY 26 2006

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application. 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 Mexico who was found inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I). The applicant filed an application for waiver of inadmissibility and evidence of extreme hardship in order to reside in the United States with her U.S. citizen spouse and children.

The district director denied the application for a waiver, finding that the applicant was statutorily ineligible for a waiver pursuant to section 212(a)(9)(C)(ii) of the Act. *Decision of District Director*, dated July 28, 2004.

The district director found the applicant inadmissible under section 212(a)(9)(C)(i)(I) of the Act, which provides, 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

....

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. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The record in the instant case reflects that, on September 3, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen husband. On June 23, 2004, the applicant appeared at CIS' District Office. The applicant admitted to entering the United States without inspection and residing in the United States, between October 1996 and March 7, 2001. On March 7, 2001, the applicant left the United States and resided in Mexico until March 15, 2001. On March 15, 2001, the applicant attempted to enter the United States by presenting the approved Form I-130. The immigration officers refused to permit the applicant to enter the United States because she was not in possession of a valid immigrant visa but allowed her to voluntarily return to Mexico. On March 16, 2001, the applicant entered the United States without admission or inspection.

On appeal, the applicant's husband contends the applicant should be granted a waiver because she was unaware of the changes in the immigration law, lacked the professional advice of counsel and the applicant's husband and children would suffer hardship if she were not granted a waiver. *See Form I-290B and Applicant's Brief*, dated August 14, 2004. While the applicant's husband's contentions may have some merit in regard to whether the applicant deserved a waiver as a matter of discretion, they have no bearing on whether the applicant is eligible for a waiver of the section 212(a)(9)(C)(i) grounds of inadmissibility under the Act.

The AAO concurs with the district director's finding that the applicant is statutorily ineligible for a waiver pursuant to section 212(a)(9)(C)(i)(I) of the Act at this time. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until March 7, 2001, the date of her departure from the United States. The district director's finding of inadmissibility in the instant case is based on the applicant's accrual of more than one year of unlawful presence and her unlawful entry into the United States on March 16, 2001.

Therefore, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act. The AAO notes that an exception to this ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See also* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

The AAO finds that since the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, she must receive permission to reapply for admission (Form I-212). An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed 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 *and* that CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on March 7, 2001, less than ten years ago. She is currently statutorily ineligible to apply for permission to reapply for admission. The applicant is eligible to file the Form I-212 after March 7, 2011.

Inasmuch as the applicant is inadmissible and there is no waiver available for inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, until 10 years after her last departure, no purpose would be served in discussing whether the alien warrants a favorable exercise of discretion. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.