

Identify information related to prevent clearly an unwanted invasion of personal privacy

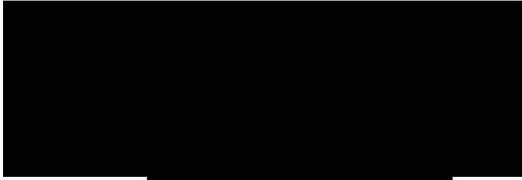
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

#3



FILE:



Office: NEWARK, NJ

Date:

DEC 08 2008

IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:



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).

for
John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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. The district director additionally found that the applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 212(a)(9)(C)(i)(I), for reentering the United States without admission after having been in the U.S. unlawfully for an aggregate period of more than one year. The applicant presently seeks a Form I-601 waiver of her ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director concluded, in a decision dated March 22, 2006, that the applicant was ineligible for relief under section 212 (a)(9)(B)(v) of the Act because she failed to establish that her husband was a U.S. citizen or lawful permanent resident, or that she had another qualifying relative for section 212(a)(9)(B)(v) of the Act waiver of inadmissibility purposes. The district director noted that even if the applicant's husband had been a qualifying relative under section 212(a)(9)(B)(v) of the Act, the applicant had also failed to establish that her husband would experience extreme hardship if the applicant were denied admission into the United States. The Form I-601 was denied accordingly. The district director noted that the applicant was also inadmissible under section 212(a)(9)(C)(i)(I) of the Act, and that she did not qualify for a waiver of this ground of inadmissibility.

Through counsel, the applicant asserts on appeal that her husband is now a qualifying relative for Form I-601 waiver of inadmissibility purposes, and that he was granted U.S. lawful permanent resident status on April 20, 2006. The applicant asserts that the district director failed to properly consider the evidence of hardship that her husband would suffer if she were denied admission into the United States, and she requests that her Form I-601 be approved.

Section 212(a)(9)(B)(i) of the Act provides in pertinent part that:

[A]ny 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 Board of Immigration Appeals clarified in *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006), that:

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence

. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years.

The U.S. departure or removal date is based on the date that the alien departs from, and remains outside of, the United States.

Adjustment of status related documentation and statements contained in the record reflect that the applicant entered the United States unlawfully on or about April 1989. The applicant departed the United States and traveled to Mexico on or about August 1998, and she reentered the United States without inspection on or about May 1999. She has not departed the U.S. since that time. The applicant filed an adjustment of status application (Form I-485) on May 24, 2004 based on an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen son. The applicant married her present husband (██████████) on December 3, 2003. ██████████ became a U.S. lawful permanent resident on April 20, 2006.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](i) in the case of an immigrant who is the *spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence*, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

(Emphasis added.) The qualifying relative relationship referred to in section 212(a)(9)(B)(v) of the Act must exist at the time that the Form I-601 is filed. *See* 8 C.F.R. § 103.2(b)(12). In the present matter, the applicant filed her Form I-601 on May 12, 2004 and the district director denied the Form I-601 on March 22, 2006. The record contains no evidence to establish that the applicant is the daughter of a U.S. citizen or lawful permanent resident. Additionally, the record reflects that the applicant's husband was not a U.S. citizen at the time the applicant's Form I-601 was filed, and he did not become a U.S. lawful permanent resident until almost two years later, on April 20, 2006. Accordingly, the applicant's husband does not meet the requirements for consideration as a qualifying family member under section 212(a)(9)(B)(v) of the Act. Because the applicant has no qualifying relative, her Form I-601 must be denied.

It is noted that the applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act. Section 212(a)(9)(C) of the Act provides in pertinent part:

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 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.

A violation under section 212(a)(9)(C)(i)(I) of the Act constitutes a permanent bar to admission to the United States. In the present matter, the evidence reflects that the applicant was unlawfully present in the United States for an aggregate period of more than one year between April 1, 1997 and August 1998. The applicant departed the United States in August 1998, and she reentered the U.S. unlawfully on or around May 1999. The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The record contains no evidence to establish that the applicant filed a self-petition under VAWA, or that the waiver requirements set forth in section 212(a)(9)(C)(iii) of the Act have been met. The applicant has additionally failed to establish that she qualifies for an exception to her ground of inadmissibility under section 212(a)(9)(C)(ii) of the Act.

It is noted that an alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act unless more than 10 years have elapsed since the alien’s last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The alien’s U.S. departure date is based on the date that the alien departs from, and remains outside of the United States. In the present matter the applicant has failed to satisfy the ten-year U.S. departure requirements, and she has failed to establish that she is eligible to apply for consent to reapply for admission into the U.S., or that U.S. Citizenship and Immigration Services has consented to her reapplying for admission into the United States. The applicant is therefore inadmissible under section 212(a)(9)(C)(i) 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.