

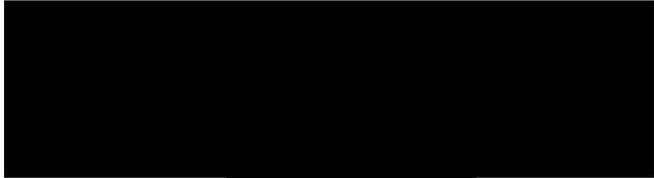
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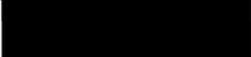


U.S. Citizenship
and Immigration
Services



H3

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 02 2009

IN RE:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(ii)

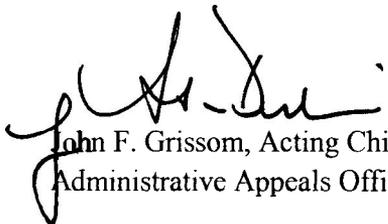
ON BEHALF OF APPLICANT:

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.

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).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who, on October 26, 1995, filed an Application for Asylum and Withholding of Deportation (Form I-589). During his asylum interview, the applicant testified that he had entered the United States without inspection on July 21, 1990. On December 4, 1995, the applicant's Form I-589 was referred to an immigration judge and the applicant was placed into immigration proceedings. On January 4, 1996, the immigration judge ordered the applicant removed *in absentia*. On August 16, 1996, a warrant for the applicant's removal was issued. On March 29, 2006, the applicant filed the Form I-212. On April 6, 2006, [REDACTED] (petitioner) filed a Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360) on behalf of the applicant, which was approved on May 30, 2006. On July 21, 2006, the director issued a notice of intent to revoke the Form I-360. On September 5, 2006, the Form I-360 was revoked. The petitioner appealed the revocation to this office. On August 4, 2008, this office issued a notice of intent to dismiss the applicant's appeal based on a findings including fraud. On October 1, 2008, this office dismissed the applicant's appeal and found that the petitioner and the applicant had engaged in fraud in regard to the Form I-360. This office also found that the finding of fraud would be considered in any future proceedings in which inadmissibility is an issue. *See AAO's Decision*, dated October 1, 2008. As such, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking a benefit under the act by fraud and willful misrepresentation of a material fact. Additionally, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to remain in the United States.

The director determined that the applicant was inadmissible pursuant to 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 ten years of his last departure. The director determined that the applicant was ineligible for an exception or a waiver of this ground of inadmissibility and denied the Form I-212 accordingly. *See Director's Decision* dated September 5, 2006.

On appeal, petitioner contends that the applicant remained outside the United States for the required five-year period. *See Petitioner's Letter*, dated September 25, 2006. In support of its contentions, petitioner submits the referenced letter and employment-related documentation for the applicant. The entire record was reviewed in rendering a decision in this case.

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

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of

the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

- (ii) Other aliens.-Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on a alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

....

(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. 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 AAO finds that the director erred in basing his denial of the applicant's Form I-212 on his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. An applicant's inadmissibility under 212(a)(9)(B)(i)(II) of the Act requires an individual to depart the United States after accruing more than one year of unlawful presence in the United States.¹ Although the applicant has accrued more than one year of unlawful presence, as discussed below, there is no evidence in the record to establish that the applicant has departed the United States since April 1, 1997, thereby triggering inadmissibility under section 212(a)(9)(B) of the Act.

On appeal, petitioner contends that the applicant departed the United States after he was ordered removed and remained outside the United States for a period of five years. Petitioner submits a letter purporting to be from [REDACTED] chief of human resources for Viva Guatemala, a housing constructor in Guatemala. The letter states that the applicant was employed from 1996 until 2002 as general laborer. The AAO notes that the letter is not sworn or accompanied by documents establishing that the company exists and is licensed in Guatemala, or accompanied by identification documentation of the purported signatory. Additionally, the letter is printed on paper that conforms to U.S. standards and not to the standard paper size found in Guatemala. The AAO notes further that the petitioner fails to submit a sworn statement from the applicant, or other documentation such as passport stamps, airline tickets, identity documents, bills, individual paychecks/receipts, etc. as independent corroboration of the applicant's residence in Guatemala from 1996 to 2002. Finally, the Form I-212 indicates that the applicant had not departed the United States since his order of removal and that he had resided in the United States for a period of 15 years prior to the filing of the Form I-212 in 2006. As such, the statements made on the Form I-212 contradict the petitioner's claim that the applicant complied with the order of removal. The AAO finds that the applicant has failed to establish his departure from the United States and residence in Guatemala from 1996 until 2002.

The AAO finds that, even if the applicant had departed the United States and remained in Guatemala from 1996 until 2002, he is still inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act. The provision holding aliens inadmissible for a period of ten years applies to exclusion or deportation orders issued both before and after April 1, 1997, even to those applicants who had remained outside the United States for the required one or five years under pre-IIRIRA law. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, dated March 31, 1997.*

¹ The AAO notes that inadmissibility pursuant to section 212(a)(9)(B) of the Act also requires accrual of unlawful presence after April 1, 1997, the date on which unlawful presence provisions were enacted.

Furthermore, if the applicant did depart the United States in 1996 and reentered the United States without a lawful admission or parole and without permission to reapply for admission in 2002, he is also inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on his attempt to gain immigration benefits under the Act by fraud and willful misrepresentation of a material fact in regard to the Form I-360.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The record indicates that the applicant does not have a U.S. citizen or lawful permanent resident spouse or parents. The record reflects that the applicant is not married. The Form I-589, signed by the applicant, indicates that both of his parents were born in Guatemala. The applicant indicated on the Form I-212 that he did not have a U.S. citizen or lawful permanent resident spouse, parent, or child.

The AAO finds that the applicant has no qualifying family members on which to base a waiver request under section 212(i) of the Act. The AAO therefore finds that the applicant is inadmissible

pursuant to section 212(a)(6)(C)(i) of the Act and is statutorily ineligible for relief pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

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.

The applicant is subject to the provisions of section 212(a)(6)(C)(i) of the Act, which are very specific and applicable. The applicant is statutorily ineligible for a waiver of this ground of inadmissibility. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.