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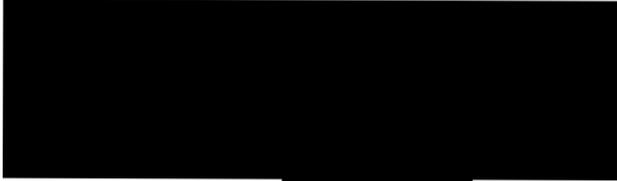
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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#3



FILE:



(RELATES)

Office: DETROIT, MI

Date: **JAN 23 2009**

IN RE:



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

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).


John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who is inadmissible to the United States pursuant to 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 and seeking admission within ten years of her last departure from the United States.

The field office director concluded that as the applicant was also inadmissible under section 212(a)(9)(C)(i)(I) of the Act and no evidence indicated that the applicant met the requirements to overcome this inadmissibility, a waiver of section 212(a)(9)(B) would serve no purpose. *Decision of Field Office Director*, at 2, dated July 29, 2008. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Id.*

On appeal, counsel asserts that the field office director wrongfully found the applicant inadmissible under section 212(a)(9)(C)(i) of the Act as she has never been unlawfully present after previous immigration violations and she has never been ordered removed or deported under section 235(b)(1) or 240 of the Act. *Form I-290B*, at 2, received August 29, 2008.

The record reflects that the applicant entered the United States without inspection in May 1995 and departed the United States in July 1998. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until July 1998, when she departed the United States. The applicant reentered the United States without inspection in August 1998. As such, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act) for having been unlawfully present in the United States for an aggregate period of more than 1 year and reentering the United States without being admitted.

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

According to section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), no relief is available unless the applicant has remained outside of the United States for ten years or has been battered or subjected to extreme cruelty. The record does not reflect either of these situations. As such, the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and the AAO finds no purpose would be served in considering the merits of her Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.