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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

PUBLIC CO



U.S. Citizenship
and Immigration
Services

H4

FILE:

Office: CHICAGO, IL

Date:

JUN 11 2009

IN RE:

APPLICATION:

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

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 for permission to reapply for admission after removal was denied by the District Director, Chicago, Illinois, 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 was expeditiously removed from the United States on January 4, 2000 and subsequently reentered the United States without being admitted on or about January 11, 2000. As such, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i). The applicant now seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to reside in the United States with his family.

The district director determined that the applicant's adverse factors outweighed his favorable ones and that an applicant inadmissible under section 212(a)(9)(C)(i) of the Act cannot file Form I-212 until he/she has been abroad for ten years. She denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Decision of the District Director*, at 2, dated December 19, 2006.

On appeal, counsel states that the Form I-212 should be granted due to the reasoning of the Ninth Circuit Court of Appeals decision *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). *Form I-290B*, received January 18, 2007.

The entire record was reviewed and considered in arriving at a decision on the appeal.

The AAO finds that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed 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....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, an applicant must file for permission to reapply for admission (Form I-212).¹ However, consent to reapply under section 212(a)(9)(C)(ii) of the Act can only be granted to one who has left the United States, is currently abroad and is seeking admission to the United States at least ten years after the date of his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record does not reflect that the applicant in the present matter has met these requirements. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. The appeal will be dismissed. .

ORDER: The appeal is dismissed.

¹ Counsel claims that the Form I-212 should be granted due to the reasoning of the Ninth Circuit decision *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). *Form I-290B*. However, the applicant's case does not arise in the Ninth Circuit. If it did arise in the Ninth Circuit, the AAO takes note of the preliminary injunction that was entered against the ability of the Department of Homeland Security (DHS) to follow *Matter of Torres-Garcia*. *Gonzales v. DHS*, 239 F.R.D. 620 (W.D. Wash. 2006). However, the Ninth Circuit reversed the district court, and ordered the vacating of that injunction. *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9th Cir. 2007). In its opinion, the Ninth Circuit held that the Board of Immigration Appeals' decision in *Matter of Torres-Garcia* was entitled to judicial deference. *Gonzales II*, 508 F.3d at 1241-42. The Ninth Circuit's mandate was issued on January 23, 2009. On February 6, 2009, the district court denied the plaintiffs' motion for a new preliminary injunction. Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt # 59), *Gonzales v. DHS*, No. C06-1411-MJP (W.D. Wash. Filed February 6, 2006). Thus, as of the date of this decision, there is no judicial prohibition in force that precludes the AAO from applying the rule laid down in *Matter of Torres-Garcia* in the Ninth Circuit or otherwise.