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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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO, TX

Date:

OCT 18 2010

IN RE:

[REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal 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:

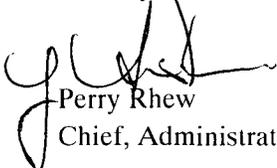
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Antonio, Texas denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED] who, on March 10, 2002, was apprehended by immigration officers in Laredo, Texas. On the same day the applicant was voluntarily returned to Mexico.

On July 15, 2008, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant indicating that she resided in [REDACTED]. On November 13, 2008, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, indicating that she resided in [REDACTED]. The Biographical Information Sheet (Form G-325) accompanying the Form I-130 indicates that the applicant resided in the United States from April 1995 until April 2000. On March 26, 2009, the Form I-130 was approved. On August 25, 2009, the Form I-601 was denied. The applicant is inadmissible under 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), for having illegally reentered the United States after accruing more than one year of unlawful presence in the United States. She 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 her U.S. citizen spouse and U.S. citizen child.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i). The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated August 25, 2009.

On appeal, counsel contends that the field office director erred in denying the Form I-212 based upon a telephone conversation with the applicant in which she stated she resided in the United States because the applicant was confused and thought the question was in regard to where her daughter resided.¹ Counsel contends that the applicant has resided in [REDACTED] since March 10, 2000.² *See Form I-290B*, dated October 2, 2009. In support of his contentions, counsel submits the referenced

¹ The AAO finds that the applicant has failed to establish that she was residing outside the United States on August 25, 2009, the date on which she stated she was residing in the United States. Moreover, even if the applicant can establish that she was residing outside the United States on this date, as discussed below, the record reflects that the applicant is inadmissible under section 212(a)(9)(C) of the Act and was in the United States on September 5, 2003, the date of her marriage, which took place in Laredo, Texas, as well on September 7, 2005, the date on which her U.S. citizen child was born.

² As discussed below, the record reflects that the applicant was present in the United States in 2002, 2003 and 2005 and the applicant has failed to provide evidence of her continued residence outside the United States. Moreover, as discussed below, the applicant would still be found ineligible to apply for permission to reapply for admission until she can establish that she is currently outside the United States and has resided outside the United States for a period of ten years since the date which she can establish by sufficient evidence on which she last departed the United States, which occurred at least after September 7, 2005, the date on which her U.S. citizen child was born.

Form I-290B and a copy of a Verification of Departure (Form I-272).³ The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) 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, 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.

The record reflects that the applicant accrued unlawful presence in the United States from April 1, 1997, the date on which unlawful presence provisions were enacted, until March or April 2000, the date on which she returned to [REDACTED]. The applicant subsequently reentered the United States without admission or parole on an unknown date, but prior to September, 5, 2003, the date on which she married her U.S. citizen spouse in [REDACTED]. The record is unclear as to whether the applicant subsequently departed and reentered the United States; however, the applicant was also present in the United States

³ The AAO notes that the Form I-272 indicates that the applicant only appeared at the U.S. Consulate in [REDACTED] on August 13, 2010 and had no evidence of her departure from the United States on March 10, 2000, or her continued residence outside the United States.

on September 7, 2005, the date on which her U.S. citizen child was born in [REDACTED]. Accordingly, the applicant has illegally reentered the United States after having accrued more than one year of the unlawful presence in the United States.

The AAO notes that a waiver to section 212(a)(9)(C)(i) 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.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless he or she has *remained outside* the United States for more than 10 years 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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, the applicant has remained outside the United States since that departure, *and* that U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on an unknown date, but after August 25, 2009, less than ten years ago, she has not remained outside the United States since that departure.⁴ The applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. The applicant in the instant case does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ The applicant will be required to provide proof that she is currently outside the United States and has resided outside the United States for a period of ten years at the time she is eligible to apply for permission to reapply for admission.