



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

H4

DATE: DEC 18 2012 OFFICE: GUATEMALA CITY, GUATEMALA

File: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guatemala who was found to be 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 one year or more and seeking admission within 10 years of his last departure from the United States. The record reflects that the applicant also was found to be inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed from and subsequently entering the United States without being admitted. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the findings of inadmissibility. Rather, he seeks permission to reapply for admission after removal pursuant to section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to reside with his wife and children in the United States.

The Field Office Director concluded that the applicant was inadmissible under a provision of the law for which there was no waiver available, and thereby, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and, in the exercise of discretion, the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. *See Decision of the Field Office Director*, dated August 29, 2011.¹

On appeal, counsel asserts that the applicant's previous counsel failed to properly inform the applicant of the legal consequences of his actions by leaving the United States after his voluntary departure order expired as well as by returning to the United States without inspection by U.S. immigration officials. Counsel also asserts that the applicant's previous counsel did not take proper procedural actions or seek the appropriate relief available to the applicant, and that the U.S. Citizenship and Immigration Services (USCIS) erred by failing to consider the entire body of evidence submitted in support of the applicant's waiver application and application for permission to reapply for admission especially in light of the applicant's minor status upon his initial entry into the United States and the hardship that the applicant's family will suffer because of the applicant's inadmissibility. *See Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated September 20, 2011.

The record includes, but is not limited to: briefs and correspondence from current and previous counsel; letters of support; identity, medical, psychological, employment, financial, and academic documents; Internet articles; and documents on conditions in Guatemala. The entire record was reviewed and considered in rendering a decision on the appeal.

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

¹ The AAO notes that section 212(a)(9)(C)(iii) of the Act provides a waiver in limited circumstances for an inadmissibility finding under section 212(a)(9)(C)(i) of the Act.

(B) Aliens unlawfully present.-

(i) In general.-Any 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.

...

(v) Waiver.-The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

(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,

...

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.

The record reflects that the applicant initially entered the United States around April 9, 1991, without inspection by U.S. immigration officials. On January 31, 1996, he affirmatively filed an asylum application, which was referred to the Immigration Court. On July 28, 1998, he was placed

in removal proceedings, and the Immigration Judge granted him voluntary departure until July 9, 1999. Previous counsel requested an extension of the voluntary departure order, which was granted to occur on or before February 28, 2000. The applicant failed to timely depart, and instead, remained in the United States until March 5, 2000. Accordingly, his voluntary departure order became a final order of removal on February 29, 2000.

The record further reflects that the applicant again entered the United States without inspection by U.S. immigration officials around September 2000, but was subsequently apprehended and placed in removal proceedings on December 16, 2004. On August 22, 2005, the applicant applied for withholding of removal under the U.N. Convention Against Torture (CAT). On February 7, 2007, the Immigration Judge denied the applicant's CAT application and ordered that the applicant be removed. On June 10, 2008, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal and affirmed the Immigration Judge's decision. On November 7, 2008, the U.S. Third Circuit Court of Appeals denied the applicant's motion for a stay of removal, and the applicant was removed from the United States on December 11, 2008. The record reflects that the applicant has remained outside the United States to date and filed an I-212 on April 6, 2011. The applicant accrued unlawful presence from September 2000 until his removal on December 11, 2008, a period in excess of one year. Accordingly, the applicant is inadmissible pursuant to sections 212(a)(9)(B)(i)(II), 212(a)(9)(C)(i)(I),² and 212(a)(9)(C)(i)(II) of the Act, and is statutorily ineligible to apply for permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the alien has been 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 10 years ago, the applicant has remained outside the United States and 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 December 11, 2008, less than 10 years ago. He is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver application.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish that he is eligible for the benefit being sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office Director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).



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ORDER: The appeal is dismissed.