

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



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

[REDACTED]

H4

DATE: **FEB 29 2012** OFFICE: NEW ORLEANS, LA FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

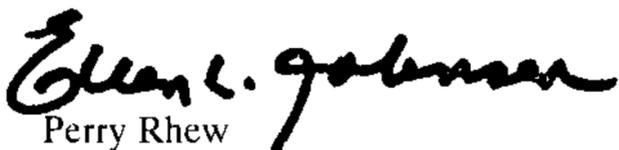
[REDACTED]

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, with a fee of \$630. 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 waiver application was denied by the Acting Field Office Director, New Orleans, Louisiana and 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 Nicaragua who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II) for having been ordered removed from the United States and, thereafter, reentering without being admitted. The applicant seeks an exception 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.

The Acting Field Office Director found that the applicant did not warrant a favorable exercise of discretion and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Acting Field Office Director's Decision*, dated July 15, 2009.

On appeal, counsel asserts that the Acting Field Office Director erred in denying the waiver application and that the applicant and his U.S. citizen son will both suffer extreme hardship if he is not allowed to remain in the United States. *Form I-290B, Notice of Appeal or Motion*, dated August 11, 2009.

The record of proceeding includes, but is not limited to, the following evidence: counsel's brief; a statement from the applicant; records relating to the applicant's immigration history; and documentation of the applicant's arrest and conviction for driving under the influence. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

....

(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. . . .

In the present case, the record reflects that the applicant first entered the United States without inspection on October 7, 1986. On August 24, 1988, an immigration judge granted the applicant

voluntary departure until November 30, 1988. The applicant appealed the immigration judge's order to the Board of Immigration Appeals (BIA) and, on September 17, 1990, the BIA affirmed the immigration judge's decision, granting the applicant voluntary departure until October 5, 1990. The applicant did not comply and remained in the United States until he was removed on April 17, 1997. He reentered the United States without inspection on December 30, 1998. Based on this history, the applicant is inadmissible pursuant to 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 and reentering the United States without being admitted.

The applicant in the present case is seeking adjustment under section 202 of the Nicaraguan and Central American Relief Act (NACARA), which requires that he be a citizen of Nicaragua or Cuba and have been continuously physically present in the United States since December 1, 1995, excluding any periods of absence not exceeding 180 days in total. While the record establishes that the applicant is a citizen of Nicaragua, it also indicates that he was absent from the United States from April 17, 1997 until December 30, 1998 a period of approximately 18 months. Therefore, the applicant is not eligible for NACARA adjustment and the AAO finds that no purpose would be served by a consideration of his waiver application.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.