

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



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[REDACTED]

DATE: OFFICE: HOUSTON, TEXAS

NOV 21 2012

FILE: [REDACTED]

IN RE: Applicant [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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Houston, Texas, 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 Mexico who initially entered the United States without inspection around July 1995. He was encountered by U.S. immigration officials at the [REDACTED], on January 17, 2007, and was granted a voluntary return to Mexico on January 18, 2007. The record also reflects that he subsequently entered the United States without inspection around February 2008, and he was encountered by U.S. immigration officials at the [REDACTED] in [REDACTED] on February 23, 2009. He was placed in removal proceedings on March 20, 2009, and the Immigration Judge ordered that he be removed from the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), on August 26, 2009. The applicant was removed on August 28, 2009. The record further reflects that he subsequently entered the United States and has remained to date. *See* Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), received March 7, 2012; *see also* Briefs Submitted in Support of Form I-212, dated March 1, 2012 and September 11, 2012. The applicant was found to be inadmissible pursuant to section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C). The applicant, through counsel, does not contest this finding of inadmissibility.¹

The Field Office Director found the applicant inadmissible pursuant to sections 212(a)(9)(C)(i)(I) and (II) of the Act and ineligible to apply for consent to reapply for admission. The Field Office Director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated May 11, 2012.

On appeal, counsel asserts that the applicant is eligible for consent to reapply for admission as he has equities in the United States and favorable factors that offset his removal as prescribed in *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973). *See Form I-290B, Notice of Appeal or Motion*, dated May 24, 2012.

The record includes, but is not limited to: counsel's briefs; letters of support; identity, psychological, and criminal history documents; photographs; and documents on conditions in Mexico. The entire record was reviewed and considered in rendering this decision.

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

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

¹ In his brief submitted on appeal, counsel indicates that the Field Office Director found the applicant to be inadmissible under section 212(a)(9)(A) of the Act and that the applicant is seeking permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The AAO notes that the record reflects that the applicant was found to be inadmissible only under section 212(a)(9)(C), not section 212(a)(9)(A) of the Act.

(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. . . .

The record reflects that the applicant initially entered the United States without inspection by U.S. immigration officials around July 1995, and remained until his voluntary return to Mexico on January 18, 2007. He subsequently entered the United States without inspection by U.S. immigration officials around February 2008, and remained until August 28, 2009, pursuant to the Immigration Judge's order of removal. He again entered the United States without inspection by U.S. immigration officials at an unknown date and has remained.² Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act,³ 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* [REDACTED]

² In his brief submitted on appeal, counsel states: "The [a]pplicant, [], lives with his U.S. [c]itizen wife [] and his two U.S. [c]itizen daughters [] at [REDACTED] (Exhibit C – E)." *Brief Submitted in Support of Form I-212*, dated September 11, 2012. Also, on Form I-212, Part IV. Reason(s) for Your Request for Permission to Reapply, the applicant states: [REDACTED] [being] deported on August 26, 2009[.] I have remained in the United States ever since [] without departing the United States." And, on Part V. Applicant's Signature and Certification, the applicant identifies his address as: "[REDACTED]"

³ The AAO notes that the applicant may be further inadmissible under section 212(a)(9)(C)(i)(I) of the Act for having accumulated unlawful presence in the aggregate period of more than one year and reentering without being admitted. However, as the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, the AAO finds that it is unnecessary to determine the applicant's inadmissibility under section 212(a)(9)(C)(i)(I).

I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and [REDACTED], 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 August 28, 2009, less than 10 years ago. Moreover, the applicant subsequently entered the United States without inspection, and is currently residing in the United States. Therefore, he has not remained outside the United States for 10 years since his last departure. He 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 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.

ORDER: The appeal is dismissed.