



U.S. Citizenship
and Immigration
Services



H4

DATE: OCT 15 2012

Office: CHICAGO, IL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility 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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Mexico who re-entered the United States without admission after having previously accrued a year or more of unlawful presence. 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). She was the spouse of a U.S. citizen. The applicant is the beneficiary of an approved I-360 Petition for Amerasian, Widow or Special Immigrant, and is seeking admission based on the exception to 212(a)(9)(C)(i) inadmissibility as a VAWA recipient pursuant to section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii), in order to reside in the United States.

The Field Office Director concluded that the applicant did not qualify for an exception to 212(a)(9)(C)(i) inadmissibility because her most recent entry without inspection after having accrued one year or more of unlawful presence was not connected to an incident of abuse by her former spouse. He denied the *Application for Waiver of Grounds of Inadmissibility (Form I-601)* on May 1, 2009.

On appeal, counsel for the applicant asserts that the Field Officer's Decision was incorrect as a matter of law, asserting that the statute only requires a connection between the abuse and re-entry into the United States, without regard to her manner of entry. *Form I-290B*, received May 29, 2009.

In support of these assertions, the record contains, but is not limited to: counsel's brief in support of the appeal; statements from the applicant, her mother and her sister; court records related to the applicant's divorce from her spouse; copies of medical records related to abuse suffered by the applicant; a copy of the approval notice for the applicant's Form I-360; a copy of the divorce decree between the applicant and her spouse; copies of educational records for the applicant in Mexico; copies the applicant's daughter's birth certificate; a copy of a letter from the applicant addressed to the Mexican consulate in Chicago; and photographs of the applicant, her former spouse and their child. The entire record was reviewed and considered in rendering this decision on the appeal.

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] has consented to the alien's reapplying for admission.

(iii) Waiver. The [Secretary], in the [Secretary's] discretion, may waive the application of clause (i) in the case of an alien who is VAWA self-petitioner if there is a connection between--

(1) the alien's battering or subjection to extreme cruelty; and

(2) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The AAO notes that an exception to inadmissibility under section 212(a)(9)(C)(i) of the Act 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. Since the applicant has an approved Form I-360, the applicant is classified as a battered spouse; however, the record must also reflect that removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States, is connected to the applicant's subjection to battery or extreme cruelty. Section 212(a)(9)(C)(iii) of the Act. The record reflects that the applicant's Form I-360 was approved based on her abuse at the hands of her now ex-spouse.

On appeal, counsel for the applicant explains that the applicant returned to the United States without inspection in June 2003 in order to obtain a divorce from her spouse and to receive marital assets and child support in the divorce proceeding to which she claims she was entitled. *Brief in Support of Appeal*, received July 3, 2009. Counsel contends that since her re-entry was to obtain a divorce, there is a sufficient connection between her re-entry into the United States and being battered by her spouse.

Counsel states the applicant had no choice but to re-enter the United States in order to obtain a divorce from her spouse. He states that she was unable to obtain a divorce under Mexican law, and that she attempted to contact the Mexican Consulate in Mexico, but that an individual there told her he could not help her obtain any property in a divorce from her spouse. A copy of a letter written by the applicant, which is addressed to the Mexican Consulate, has been submitted.

Counsel asserts that the applicant's most recent re-entry into the United States without inspection was part of a cycle of violence that the applicant was attempting to escape, and which is the basis of her filing of a Form I-360 self-petition.

Upon review, the AAO finds that the applicant has established a clear connection between the battering and subjection to extreme cruelty she suffered at the hands of her former spouse and her departure and reentry to the United States that gave rise to inadmissibility under section 212(a)(9)(C)(i) of the Act. Section 212(a)(9)(C)(iii) of the Act. The record contains probative statements and documentary evidence to support that the applicant was subjected to a pattern of physical and emotional abuse from her former spouse beginning as early as February 1995. She departed the United States with her daughter in approximately November 2000 to escape further abuse, and she resided in Mexico. The letter the applicant submitted to the Mexican Consul in Chicago seeking assistance in obtaining a divorce and custody decree reflects that she sought to obtain a divorce from her former husband prior to her entry to the United States in June 2003.

The applicant entered the United States without inspection in approximately June 2003. This entry serves as the event that triggered inadmissibility under section 212(a)(9)(C)(i) of the Act. Approximately three months later, on September 4, 2003, the applicant's former spouse physically attacked her resulting in injury that required treatment in an emergency room. This incident prompted a court to issue an emergency criminal order of protection. The applicant filed for divorce, custody, and a property settlement on December 30, 2003, and an order dissolving her marriage and awarding her custody of her child was entered on January 12, 2004.

The AAO finds the sequence of these events to support that the applicant entered the United States to pursue a divorce from her former spouse, and that the divorce was clearly part of a lengthy pattern of abuse. It is inconsequential whether the applicant had other means of entering the United States, or whether she could have pursued relief from Mexico, as the fact remains that her entry was connected to her "battering or subjection to extreme cruelty," as required by section 212(a)(9)(C)(iii) of the Act.

Accordingly, the applicant has shown that she meets the requirements for the exception in section 212(a)(9)(C)(iii) of the Act. The AAO finds that the compelling circumstances in the present matter warrant a favorable exercise of discretion.

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. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the decision of the field office director will be withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.