



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

(b)(6)

Date: **MAY 14 2013**

Office: MEXICO CITY

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)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A), and Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 in accordance with the instructions on 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. 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, section 212(a)(9)(C) of the Act for attempting to reenter the United States without being admitted after being unlawfully present for more than one year, and section 212(a)(9)(A)(i) of the Act as an alien previously removed from the United States. The applicant is married to a U.S. citizen and seeks permission to reenter the United States in order to reside with his wife and children in the United States.

The field office director found that approving the applicant's Form I-212 would serve no purpose because the applicant remains inadmissible under additional grounds of inadmissibility. The field office director denied the application accordingly.

On appeal, the applicant contends the decision of the field office director was a misapplication of the legal standards and ignored relevant factors to establish extreme hardship. The applicant submits additional evidence on 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 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.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten 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, the BIA has held that 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 *and* USCIS has consented to the applicant's reapplying for admission.

Here, the record shows, and the applicant does not contest, that he entered the United States without inspection in March 2004 and remained until February 2007. The record also shows, and the applicant does not contest, that he attempted to enter the United States without inspection in February 2009 and was detained by immigration officials. The applicant was placed in expedited removal proceedings and was removed from the United States on March 17, 2009.

Therefore, because the applicant attempted to reenter the United States without being admitted, after he had been unlawfully present in the United States for more than one year, he is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act. An alien inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply until he has been outside the United States for more than ten years since the date of his last departure from the United States. Here, the applicant's last departure was on March 17, 2009. He remains statutorily ineligible to apply for permission to reapply for admission until March 17, 2019. Accordingly, the appeal must be dismissed.

Because the applicant is mandatorily inadmissible under section 212(a)(9)(C) of the Act and no waiver is available to an alien who has not remained outside the United States for ten years, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States.

ORDER: The appeal is dismissed.