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



U.S. Citizenship  
and Immigration  
Services

Date: DEC 18 2014 Office: NEBRASKA SERVICE CENTER

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)

ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for accruing more than one year of unlawful presence and then re-entering the United States without being admitted. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director determined that the applicant is statutorily ineligible to request permission to reapply for admission until 10 years have passed since his last departure date from the United States. He denied the Form I-212 accordingly. *See Decision of the Director*, dated March 11, 2014.

On appeal, the applicant's accredited representative asserts that the Director improperly found the applicant inadmissible under section 212(a)(9)(C) of the Act, because the U.S. consular officer in Ciudad Juarez had not noted this particular inadmissibility in their Form CDJ-450A, dated May 15, 2013. The applicant's representative claims that the Director, by adding this inadmissibility, circumvented the role of the consular officer and failed to focus on the issue of the applicant's spouse's extreme hardship.<sup>1</sup> The applicant's representative does not contest the Director's findings regarding the applicant's inadmissibility under 212(a)(9)(C).

The record includes, but is not limited to: letters from the applicant, the qualifying spouse and her church; their identification documentation; financial documentation; academic documentation; medical documentation regarding the applicant's spouse, mother-in-law and children; psychological documentation regarding the qualifying spouse; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant, having been apprehended, departed the United States on November 8, 2011, under a grant of voluntary return. Prior to this departure, he had accrued unlawful presence in the United States from March 2005 until his departure on November 8, 2011. The applicant subsequently re-entered the United States without inspection on November 18, 2011 at Del Rio, Texas, again was apprehended, and he was granted voluntary return and departed the United States on that date. The applicant does not contest these facts.

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-

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<sup>1</sup> The extreme hardship requirement primarily relates to the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, that the Nebraska Service Center Director denied on March 11, 2014. The record includes two separate Forms I-290B, Notice of Appeal or Motion, for both applications; however, only the Form I-212's appeal form appears to have been properly filed.

(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.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant was unlawfully present in the United States for an aggregate period of more than a year and was permitted to voluntarily return to Mexico on November 8, 2011. He subsequently re-entered the United States without inspection on November 18, 2011, and last departed the United States on November 18, 2011. He therefore has not remained outside the United States for 10 years since his last departure. As a result of his unlawful presence and subsequent re-entry without being admitted, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C) of the Act.

The applicant's representative asserts that the Director improperly found an additional ground of inadmissibility under section 212(a)(9)(C) of the Act that the consular office had not found. The applicant's representative indicates that the Director made a *de novo* finding rather than focusing on the extreme hardship to the applicant's qualifying spouse. The applicant's representative does not cite to case law or other authority to support his assertion that the Director's actions were improper. Further, the applicant's representative does not assert that the applicant is not inadmissible under section 212(a)(9)(C) of the Act. Moreover, as the applicant is statutorily ineligible to apply for permission to reapply for admission, the analysis of extreme hardship to the applicant's qualifying spouse is unnecessary at this time.

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 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 has consented to the applicant's reapplying for admission. In the present matter, the applicant accrued over one year of unlawful presence in the United States, voluntarily returned to Mexico on November 8, 2011, and re-entered the United States without inspection on November 18, 2011. The applicant's last departure from the United States was on November 18, 2011, and therefore he has not remained outside the United States for 10 years. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, the appeal will be dismissed.

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*NON-PRECEDENT DECISION*

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In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.