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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JUL 16 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

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)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been removed from the United States on February 14, 1996, 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 an approval of the Form I-212 was not warranted as a matter of discretion, because he had denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility. He denied the Form I-212 accordingly. *See Decision of the Director,* dated September 9, 2013.

On appeal, the applicant and his qualifying spouse assert that he re-entered the United States in April 1996, not on May 1, 1999, as indicated in the Director's decision and that the applicant remained in the United States from April 1996 until his removal in January 2011. Further, the applicant provides paystubs from his employers in the United States that he asserts prove he did not attempt to cross the border on May 1, 1999.

The record includes, but is not limited to, letters from the applicant, his qualifying spouse, his children and his brother; financial documentation; and documentation relating to child custody and support. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant was ordered excluded from the United States on February 14, 1996, after seeking to procure admission to the United States by presenting a counterfeit document at the Port of Entry. The applicant subsequently re-entered the United States without inspection, and on January 30, 2011, he signed a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) that specifies he illegally re-entered the United States on or about May 1, 1999 at or near Texas. The applicant signed the form's "Acknowledgment and Response" box and indicated with a checkmark that he did not wish to make a statement contesting the determination that his removal order would be reinstated. He was removed from the United States on January 31, 2011 and has not returned since.

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.

Although the applicant does not contest his inadmissibility based on his unlawful presence, he asserts that he did not re-enter the United States without inspection in May 1999. After his removal on February 14, 1996, the applicant asserts that he re-entered the United States without inspection in April 1996. He provides paystubs to demonstrate that he was in the United States after April 1996.

The photocopied paystubs the applicant provides from two employers reflect significant unexplained gaps. Specifically, the applicant submits no paystubs between November 1995 and June 21, 1996, which may mean that he was in the United States and not working or that he was outside of the country until an unknown date before resuming his employment in June 1996. However, he also submits no paystubs dated after November 28, 1998 and before May 22, 1999, which may mean that he was unemployed in the United States or that he was outside of the country until re-entering on May 1, 1999, as the record indicates and as noted in the Director's decision. These and other gaps in the time periods covered by the applicant's paystubs are undefined and could relate to other exits from, and re-entries into, the United States. The applicant's evidence, therefore, does not establish he re-entered the United States in April 1996. If the evidence had established that the applicant re-entered the United States in April 1996 instead of May 1999 and that he did not depart until his removal in 2011, he would not be inadmissible under section 212(a)(9)(C)(i)(II) of the Act. According to U.S. Citizenship and Immigration Services (USCIS) policy, section 212(a)(9)(C)(i)(II) applies only to unlawful re-entry on or after the April 1, 1997, the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs*, "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)," dated June 17, 1997.

The record reflects that the applicant was ordered removed from the United States on February 14, 1996, and on Form I-871 he acknowledged re-entering the United States without inspection on May 1, 1999. The applicant was removed to Mexico in 2011 and therefore, has not remained outside the United States for 10 years since his last departure. As a result of his removal and subsequent re-entry without admission, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act.

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 ten years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant was ordered removed from the United States on February 14, 1996, and reentered the United States without inspection on May 1, 1999. The applicant returned to Mexico in 2011 and therefore, has not remained outside the United States for ten years since his last departure. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, the appeal will be dismissed.

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.