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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 0 2 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE:

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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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.[1] The appeal will be dismissed.

The applicant is a native and citizen of Brazil who submitted a Form I-212 to receive permission to reapply for admission into the United States under section 212(a)(9)(C)(ii), 8 U.S.C. §§ 1182(a)(9)(C)(ii), in order to reside in the United States with her U.S. citizen spouse and children.

The Director concluded that the applicant is inadmissible under section 212(a)(9)(C) of the Act and not currently eligible for a Form I-212 application, and denied the application accordingly. *Decision of the Director*, dated February 6, 2014.

On appeal, counsel for the applicant acknowledges that the applicant is admissible pursuant to section 212(a)(9)(C) of the Act, but contends that the ten year bar is unduly punitive and a violation of fundamental due process due to its imposition of exceptional and extremely unusual hardship on U.S. citizen family members. The entire record was reviewed and considered in rendering this decision.

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.

[1] The applicant also filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, denied on February 6, 2014. There is no indication that the applicant has filed an appeal of her Form I-601 denial.

The record reflects that the applicant entered the United States pursuant to a B-2 visa, in June 2000, with authorization to remain in the United States for a six month period. The applicant remained in the United States beyond this authorized period, departing in or around December 2002. The applicant accrued over one year of unlawful presence in the United States from the expiration of her authorized period of stay in the United States until her departure in or around December 2002.

The applicant subsequently attempted to enter the United States pursuant to this same visa on July 3, 2003 and was ordered removed in section 235(b)(1) proceedings. The applicant was removed on the same date and then entered the United States without authorization or parole in April 2004. She remained in the United States without permission until her departure in June 2012.

The applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act for entering the United States without admission after accruing over one year of unlawful presence in the United States and section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission after an order of removal pursuant to section 235(b)(1).

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). 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's last departure from the United States took place in June 2012. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Counsel for the applicant acknowledges the applicability of the section 212(a)(9)(C) bar to the applicant. However, counsel asserts that the ten year bar is unduly punitive and imposes exceptional and extremely unusual hardship to the applicant's U.S. citizen family members, creating a violation of fundamental due process. The cases cited by counsel in support this position contain facts and decisions that are not pertinent to the applicant's current situation of inadmissibility under section 212(a)(9)(C) of the Act. *Arevalo v. Ashcroft*, 344 F.3d 1 (1st Cir. 2003) (discussing the reinstatement of a previous order); *Jankowski-Burczyk v. INS*, 291 F.3d 172 (2nd Cir. 2002) (deciding whether a lawful permanent resident received equal protection in applying for section 212(h) relief); *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996) (determining whether an applicant merits discretion in applying for section 212(h) relief); *Matter of Rainford*, 20 I&N Dec. 598 (BIA 1992) (finding that an applicant with a criminal possession of a weapon conviction can be admissible for adjustment of status); *American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045 (9th Cir. 1995) (discussing whether a pre-IIRIRA provision applied to selective-enforcement claims); *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (considering whether an applicant demonstrated extreme hardship upon separation from her children). Unlike the applicant, the cases cited by counsel do not contain applicants

inadmissible under section 212(a)(9)(C) and a waiver under this section does not require hardship analysis. The applicant has failed to demonstrate that any of these cases establish that the provisions under section 212(a)(9)(C) are unduly punitive or violate her fundamental due process. Further, the Board has indicated that section 212(a)(9)(C) of the Act was enacted to single out recidivist immigration violators to make admission more difficult after a departure. *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007). The BIA findings in *Matter of Torres-Garcia, Matter of Briones,* and *Matter of Diaz and Lopez* are binding in this case. The applicant must remain outside the United States for 10 years before she will be eligible to apply for permission to reapply for admission.

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