



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

(b)(6)



Date:

JUN 05 2015

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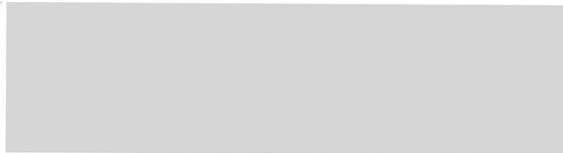
APPLICATION RECEIPT #:

IN RE:

Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States 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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

fr

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to reside in the United States with his U.S. citizen spouse and child.

The director found that the applicant is ineligible for a grant of the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) as he is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and 10 years have not elapsed since the date his last departure from the United States on April 29, 2012. The director denied the Form I-212 accordingly. *Decision of the Director*, dated October 10, 2014.

On appeal the applicant asserts that he is eligible for a waiver as he is seeking a waiver prior to his re-entry to the United States, he has never been ordered removed from the United States, and 10 years have passed since his 1999 and 2004 departures.

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.

The record reflects that the applicant entered the United States without inspection in February 1998 and remained until December 1999, accumulating more than one year of unlawful presence. The applicant subsequently entered the United States without inspection in April 2000 and remained until December 2004. He again entered without inspection in May 2005 and remained until April 29, 2012.

As noted above, on appeal the applicant contends that he is eligible for a waiver. The applicant states that he is seeking a waiver prior to his re-entry to the United States rather than from within the United States, that he has never been ordered removed from the United States, that more than 10 years have passed since his 1999 and 2004 departures, and that he is deserving of a favorable exercise of discretion in balancing hardship against the negative factor of his unlawful presence. On appeal the applicant also indicates there is a dispute as to the 1999 and 2004 entries referenced, but he provides no further detail or clarification.

The record reflects that the applicant entered the United States without being admitted on two occasions following his accrual of more than one year of unlawful presence from February 1998 to December 1999. Pursuant to section 212(a)(9)(C)(i)(I) of the Act, an alien has been unlawfully present in the United States for an aggregate period of more than 1 year and who enters or attempts to reenter the United States without being admitted is permanently inadmissible. 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 USCIS has consented to the applicant's reapplying for admission. The applicant claims that although he is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, the holding in *Matter of Briones* does not apply to him because "he is seeking a waiver and admission prior to his re-entry, not from within the United States." However, the BIA held that an alien may not apply for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act until more than 10 years since the date of the alien's last departure from the United States. The record establishes that the applicant last departed from the United States on April 29, 2012, and he is therefore currently statutorily ineligible to apply for permission to reapply for admission until April 29, 2022.

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.