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



[REDACTED]

Date: **MAY 28 2015** [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for a waiver of inadmissibility under Section 212(a)(9)(C)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(iii)

ON BEHALF OF APPLICANT:
[REDACTED]

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, California, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without inspection in 1995. In October 2005, the applicant departed the United States to attend her consular interview. On two separate occasions in November 2006, the applicant attempted to procure entry to the United States with fraudulent documentation. The applicant was expeditiously removed on November 16, 2006. Shortly thereafter, the applicant entered the United States without being admitted and has remained in the United States to date.

The applicant was found to be inadmissible under 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 her entry without being admitted after being expeditiously removed. The record establishes that the applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I) of the Act, for her entry without being admitted after having accrued more than one year of unlawful presence in the United States and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry to the United States on two separate occasions by fraud or willful misrepresentation. In August 2012, the applicant sought permission to reapply for admission into the United States under the waiver provision of section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii), in order to reside in the United States.

The field office director determined that the applicant was not eligible for a waiver under section 212(a)(9)(C)(iii) of the Act based on a finding that there was no credible evidence that the applicant's past immigration violations were connected to the abuse suffered at the hands of her spouse. The field office director further found that the applicant was not eligible to apply for permission to reapply for admission because she had not remained outside the United States for the required ten years. The Form I-212 was denied accordingly.

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.

As reflected above, a waiver of section 212(a)(9)(C)(i) inadmissibility is available to individuals classified as battered spouses under section 204(a)(1)(A)(iii) of the Act. The record establishes that a Form I-360 Petition for Amerasian, Widow or Special Immigrant as a self-petitioning battered spouse of a United States citizen under the Violence Against Women Act (Form I-360) filed by the applicant was approved in April 2012. The Form I-360 included detailed evidence regarding the battering or extreme cruelty experienced by the applicant by her U.S. citizen spouse, including police reports regarding domestic abuse incidents between the applicant and her husband in 2010 and 2011, a March 2011 letter establishing that the applicant enrolled in a domestic violence awareness group in February 2011, and a March 2011 report from a clinical neuropsychologist who evaluated the applicant due to depression and anxiety related to abuse by her husband. Based on her approved VAWA petition, the applicant has established that she is eligible to apply for a waiver under section 212(a)(9)(C)(iii) of the Act. However, the applicant has not established that she meets the statutory requirements of section 212(a)(9)(C)(iii) of the Act for approval of the waiver.

In the affidavit that was submitted by the applicant with the Form I-212, she stated that she never would have departed the United States in 2005 if she were not afraid of her husband and subject to his manipulations. The applicant further maintains that once she traveled abroad to pursue immigrant visa processing, her husband stopped assisting her with respect to her immigrant visa application and her request for a waiver of inadmissibility and she felt abandoned. She contends that her husband began threatening her to return to the United States and for that reason, in November 2006, she made two attempted entries to the United States by fraud or willful misrepresentation, and ultimately, was able to enter the United States without authorization on January 1, 2007.

The record establishes that the applicant departed the United States to attend her immigrant visa interview. Further, the record establishes that her husband did assist her with respect to her Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). The Form I-601 was submitted by the applicant on November 4, 2005. The Form I-601 submission included a hardship declaration from her spouse dated November 1, 2005. The record also establishes that the applicant's spouse underwent a psychological evaluation on October 20, 2006, in support of the Form I-601. The evaluation indicates that the applicant's spouse was experiencing emotional and financial hardship due to his wife's absence. The Form I-601 was denied on October 17, 2006 based



on the district director's finding that the applicant had failed to establish that the bar to admission would result in extreme hardship to a qualifying relative.

The applicant attempted to procure entry to the United States without authorization shortly after the denial of her waiver application. The discrepancies in the record diminish the applicant's contention that there was a connection between the battering or extreme cruelty and her departure from the United States in 2005, her attempted reentries to the United States in 2006, which led to her removal, or the applicant's subsequent entry to the United States without being admitted in 2007. Contrary to the applicant's assertions, the record establishes that her husband did assist with her waiver application. She has not established a connection between the battering or extreme cruelty and her departure, removal and subsequent reentry to the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.