



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-O-V-

DATE: NOV. 4, 2015

APPEAL OF HARLINGEN FIELD OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL

The Applicant, a native and citizen of Mexico, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Field Office Director, Harlingen Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The Applicant seeks permission to reapply for admission into the United States in order to reside with his family.

In a decision dated November 7, 2014, the Director determined that the Applicant had not submitted evidence of favorable factors and denied the Form I-212 as a matter of discretion.

On appeal the Applicant asserts that his spouse and children need his presence in the United States. With the appeal the Applicant submits a statement, employment documentation, a certificate of completion of a DWI intervention program, a 1999 lease agreement, insurance documents, financial documentation, a U.S. birth certificate for the Applicant's daughter, medical information for the Applicant's spouse, biographic documentation, a letter in support from the Applicant's daughter, and academic documentation pertaining to the Applicant's children. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a

second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

(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.

(b)(6)

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The record establishes that the Applicant last entered the United States on or about January 15, 2000 without inspection. On [REDACTED] 2004, the Applicant was convicted of Abandoning a Child in violation of Texas Penal Code section 22.041. On July 20, 2004, the Applicant was placed in removal proceedings and on September 29, 2005, the Applicant was ordered removed by an immigration judge. On August 1, 2006, the Board of Immigration Appeals affirmed that decision. On February 21, 2007, the United States Court of Appeals for the Fifth Circuit remanded the Applicant's case to determine whether his conviction barred him from relief of cancellation of removal. On March 13, 2008, the Board again affirmed the decision of the immigration judge, dismissing the Applicant's appeal. On July 9, 2008, the United States Court of Appeals for the Fifth Circuit dismissed the Applicant's Petition for Review of an Order of the Board of Immigration Appeals. On November 16, 2012 the Applicant was removed to Mexico. He is thus inadmissible pursuant to section 212(a)(9) of the Act.

The record also establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, which applies to individuals that have entered the United States without being admitted after having accrued more than one year of unlawful presence in the United States. We note that on Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status submitted by the Applicant and his attorney on July 11, 2005, the Applicant indicated at item 19 that he had first entered the United States without inspection in August 1989, and indicated at item 25 that he departed in June 1994, reentered in July 1994, departed again in December 2000, and reentered in February 2001 without inspection and admission. At item 24 the Applicant indicated that he last entered "EWI Entered Thru Land." The record thus establishes that the Applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions went into effect, until his departure in December 2000, and he subsequently reentered the United States without inspection as detailed above.

A foreign national who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the foreign national has been outside the United States for more than ten years since the date of his or her last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). *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. Here, the record establishes that the Applicant last departed the United States on or around November 16, 2012, less than 10 years ago. Accordingly, the Applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the Applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the Applicant is statutorily ineligible to apply for consent to reapply at this time.

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ORDER: The appeal is dismissed.

Cite as *Matter of L-O-V-*, ID# 14678 (AAO Nov. 4, 2015)