



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

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

MATTER OF J-J-M-

DATE: MAY 3, 2016

APPEAL OF NEW YORK, NEW YORK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Peru, seeks a waiver of inadmissibility for reentering the United States without being admitted, after having been ordered removed. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(C)(iii), 8 U.S.C. § 1182(a)(9)(C)(iii). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if there is a connection between the subjection to battery or extreme cruelty and the removal from the United States and reentry without admission.

The Field Office Director, New York, New York, denied the application. The Director concluded that the Applicant was inadmissible for reentering the United States without admission after having been ordered removed. The Director further determined that the Applicant, a Violence Against Women Act (VAWA) self-petitioner, was not eligible for a waiver under section 212(a)(9)(C)(iii) of the Act since he did not establish a connection between his subjection to battery or extreme cruelty and his removal from the United States and reentry without admission.

The matter is now before us on appeal. In the appeal, the Applicant claims that the Director erred in finding him inadmissible because section 245(a) of the Act waives entry without inspection for a VAWA self-petitioner. He further asserts that he is not inadmissible under section 212(a)(9)(C) of the Act since his only immigration violation was his entry into the United States without inspection in 2000.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for entering the United States without admission after having been ordered

removed from the United States. Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides, in pertinent part:

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 (Secretary) has consented to the alien's reapplying for admission.

(iii) Waiver. The [Secretary] 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.

Section 245 of the Act provides, in pertinent part:

(a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he

(b)(6)

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may prescribe, to that of an alien lawfully admitted for permanent residence if

- (1) the alien makes an application for such adjustment,
- (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
- (3) an immigrant visa is immediately available to him at the time his application is filed.

## II. ANALYSIS

The issues presented on appeal are (1) whether the Applicant is inadmissible under section 212(a)(9)(C) of the Act and (2) whether he meets the requirements for a waiver under section 212(a)(9)(C)(iii) of the Act.

With the Form I-601 the Applicant submitted a statement, medical records, financial records, and support letters. The record also contains an approved Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant that the Applicant filed as a self-petitioning battered spouse of a U.S. citizen under VAWA. On appeal, the Applicant submits a brief.

The evidence in the record establishes that the Applicant is inadmissible under section 212(a)(9)(C) of the Act for reentering the United States without admission after having been ordered removed. It further establishes that he has not met the section 212(a)(9)(C)(iii) requirements for a waiver.

### A. Inadmissibility

The record establishes that on November 10, 1999, the Applicant attempted to enter the United States by presenting a nonimmigrant visa.<sup>1</sup> The record reflects that he was placed in secondary inspection where a search revealed that he had in his possession a counterfeit social security card and employment authorization card. The Applicant was found inadmissible under section 212(a)(7)(i)(I) of the Act for not being in possession of a valid unexpired immigrant visa. On [REDACTED] 1999, in accordance with section 235(b)(1) of the Act, he was expeditiously removed from the United States. The record further reflects that on February 15, 2000, the Applicant reentered the United States without inspection at [REDACTED], Arizona. The Applicant incorrectly argues that the November 10, 1999 denial of admission does not constitute an immigration violation. The record clearly

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<sup>1</sup> USCIS records also show that on December 23, 1998, the Applicant entered the United States with a nonimmigrant visa and departed on March 19, 1999. The records further establish that on April 6, 1999, July 4, 1999, and August 4, 1999, he entered the United States with a nonimmigrant visa.

establishes that the Applicant was denied admission and expeditiously removed from the United States. Because he reentered without admission after having been ordered removed, section 212(a)(9)(C)(i)(II) of the Act applies to the Applicant.

The Applicant asserts that section 245(a) of the Act waives inadmissibility for a VAWA self-petitioner. Although section 245(a) states that a beneficiary of an approved VAWA self-petition may adjust status to lawful permanent resident, that section further states that the individual must be admissible to the United States. *See* section 245(a)(2). The Applicant must therefore establish that he is admissible to the United States.

#### B. Waiver

Section 212(a)(9)(C)(iii) of the Act waives inadmissibility under section 212(a)(9)(C)(i)(II) if the VAWA self-petitioner demonstrates a connection between the battery or extreme cruelty he was subjected to and his removal and reentry into the United States. The Applicant's approved VAWA petition states that he met his former spouse in 2001. Since the record reflects that his immigration violations were in 1999 and 2000, which is before he met his former spouse, he is unable to establish a connection between his removal and reentry into the United States and the battery or extreme cruelty. He therefore does not meet the requirements for a waiver under section 212(a)(9)(C)(iii) of the Act.

### III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-J-M-* ID# 16101 (AAO May 3, 2016)