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



U.S. Citizenship
and Immigration
Services

H5

[Redacted]

FILE: [Redacted] Office: SPOKANE, WA

Date: DEC 06 2010

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Spokane, Washington. The matter 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)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien who reentered the United States without inspection after previously being ordered removed. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The field office director denied the applicant's waiver application based on the finding that the applicant was ineligible to reapply for admission to the United States after having been removed. *Decision of the Field Office Director*, dated May 9, 2008.

On appeal, counsel contends that the applicant is eligible to reapply for admission to the United States and that the field office director erred in failing to address the merits of the waiver application. *Brief in Support of Appeal*, dated June 4, 2008.

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.

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. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Gonzales v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). 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 ten years ago, the applicant has remained outside the United States, and the United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. To the extent counsel contends that the holding in *Gonzales* should "not be applied to [the applicant's] case until the mandate from the Ninth Circuit has been issued," *Brief in Support of Appeal* at 1-2, the AAO notes that the Ninth Circuit's mandate issued on January 23, 2009. On February 6, 2009, the district court denied the plaintiffs' motion for a new preliminary injunction. Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt #59), *Gonzales v. DHS*, No. C06-1411-MJP (W.D. Wash., filed February 6, 2006). Thus, as of the date of this decision, there is no judicial prohibition in force that precludes the AAO applying the rule laid down in *Matter of Torres-Garcia*.

In this case, the record shows that on August 4, 1999, the applicant attempted to enter the United States using another individual's border crossing card. The applicant was ordered removed for attempting to enter the United States using an entry document lawfully issued to another person. *Notice and Order of Expedited Removal (Form I-860)*, dated August 4, 1999. The applicant was removed from the United States the same day. *Notice to Alien Ordered Removed/Departure Verification (Form I-296)*, dated August 4, 1999. The record further shows that, two weeks later, on August 19, 1999, the applicant again attempted to enter the United States using another individual's border crossing card. The applicant was again ordered removed for attempting to enter the United States using an entry document lawfully issued to another person. *Notice and Order of Expedited Removal (Form I-860)*, dated August 19, 1999. The applicant was removed from the United States for a second time. *Notice to Alien Ordered Removed/Departure Verification (Form I-296)*, dated August 19, 1999. Furthermore, the record shows, and the applicant does not contest, that at some point after her removals in 1999, she entered the United States without inspection. *Affidavit of [REDACTED]* dated March 13, 2008, at ¶ 4; *Application for Employment Verification (Form I-765)*, dated June 23, 2007 (stating that her last entry into the United States was in July 2000 without inspection).

The AAO finds that the applicant entered the United States without being admitted, after being ordered removed under section 235(b)(1) of the Act. Therefore, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The applicant's last departure from the United States occurred in August 1999. The applicant reentered the United States sometime thereafter and is currently residing in the United States. Therefore, she has not remained outside the United States for ten years since her last departure. Accordingly, she is currently statutorily ineligible to apply for permission to reapply for admission. As such, as the field office director properly concluded, no purpose would be served in adjudicating her waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and the appeal must be dismissed as moot.

ORDER: The appeal is dismissed.