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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

#15

[REDACTED]

FILE:

[REDACTED]

Office: SANTA ANA, CALIFORNIA

Date: **DEC 21 2010**

IN RE:

Applicant:

[REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); and Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality 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,

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for

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Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, 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)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a lawful permanent resident of the United States and the mother of three United States citizen children and one Mexican citizen child. She is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). The applicant 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and children.

The Field Office Director found that since the applicant entered the United States without permission from the Attorney General and within the period during which she was barred to attempt to enter, or be in the United States, her waiver application cannot be accepted, and the Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 18, 2008.

On appeal, the applicant, through counsel, claims that the applicant's husband is and will suffer extreme hardship should the applicant not be allowed to stay in the United States. *Form I-290B*, filed February 14, 2008.

The record includes, but is not limited to, a letter from counsel, a statement from the applicant, medical documents for the applicant's father, a psychological evaluation of the applicant's husband, and documents from the applicant's expedited removal. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present case, the record indicates that in 1988, the applicant entered the United States without inspection. In January 2005, the applicant departed the United States. On February 11, 2005, the applicant attempted to enter the United States by presenting a counterfeit Mexican passport with a counterfeit temporary I-551 ADIT stamp. On the same day, the applicant was expeditiously removed from the United States. On or about February 15, 2005, the applicant entered the United States without inspection.

Based on the applicant's use of a counterfeit Mexican passport and I-551 ADIT stamp in an attempt to procure admission to the United States, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Additionally, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until January 2005, the date the applicant voluntarily departed the United States. As the applicant is seeking admission to the United States within ten years of her February 11, 2005 removal from the United States, she is inadmissible

pursuant to section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Based on her reentry on or about February 15, 2005, the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and entering the United States without inspection. Additionally, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed under section 235(b)(1) of the Act and entering the United States without inspection.

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) or section 212(a)(9)(C)(i)(II) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, consent to reapply under section 212(a)(9)(C)(ii) of the Act can only be granted to one who has left the United States, is currently abroad and is seeking admission to the United States at least ten years after the date of his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record does not reflect that the applicant in the present matter has met these requirements. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i)(I) or section 212(a)(9)(C)(i)(II) of the Act, and the AAO finds no purpose would be served in considering the merits of her Form I-601 waiver application under section 212(a)(9)(B)(v) and section 212(i) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.