identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

[redacted]

H2 H5

FILE: [redacted] Office: SAN BERNARDINO Date: JUN 22 2010

IN RE: Applicant: [redacted]

APPLICATION: 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 $585. 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, San Bernardino, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant is further inadmissible under section 212(a)(9)(C) of the Act for having been ordered removed under section 235(b)(1) of the Act and entering the United States without being admitted. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 19, 2007.

On appeal, counsel for the applicant asserts that the applicant's U.S. citizen husband and eight children will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated November 13, 2007.

The record contains, but is not limited to, a brief from counsel; statements from the applicant, the applicant's husband, the applicant's children, and other individuals in support of the application; copies of birth records for the applicant and her family members; tax, employment, and financial records for the applicant and her husband; a copy of the applicant's marriage certificate, and; a copy of the applicant's husband's naturalization certificate. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on May 8, 1999 the applicant attempted to enter the United States at the San Ysidro, California port of entry by presenting a Form I-551 alien registration card that did not belong to her. On May 16, 1999, she attempted to enter the United States at the Calexico, California port of entry by presenting a Form I-586 border crossing card that did not belong to her. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by willful misrepresentation.. The applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act on appeal.

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 has consented to the alien's reapplying for admission.

An applicant who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless more than 10 years have elapsed since the date of the applicant's last departure from the United States. *See Matter of Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007); *Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006). 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 of the United States during that time, *and* that USCIS has consented to the applicant's reapplying for admission. *Matter of Briones*, 24 I&N Dec. at 358, 371; *Matter of Torres-Garcia,* 23 I&N Dec. at 873, *aff'd., Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007).

In the present matter, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act due to the fact that she was ordered removed under section 235(b)(1) of the Act on two separate occasions, on May 9 and 16, 1999, and she subsequently entered the United States without inspection later in the same month. The applicant has not departed the United States since her entry without inspection in May 1999. As the applicant has not been out of the United States for a total of ten years, she is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver application under section 212(i) of the Act.

The field office director did not indicate that the applicant is inadmissible under section 212(a)(9)(C) of the Act. However, an application that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

In proceedings regarding waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that she has not shown that a purpose would be served in adjudicating her waiver under section 212(i) of the Act due to her inadmissibility under section 212(a)(9)(C) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.