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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

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: NOV 10 2010

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having attempted to enter the United States through fraud or willful misrepresentation. The applicant is the daughter and mother of U.S. citizens. She seeks a waiver of her inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated September 21, 2009.

On appeal, the applicant contends that the Field Office Director erred in concluding that the applicant's father would not suffer extreme hardship if her waiver application is denied. Counsel also contends that the totality of the applicant's circumstances were not considered, including the adverse effect that her removal would have on her daughter and her daughter's medical issues. Counsel further states that the Field Office Director failed to consider that the applicant's inadmissibility based on her prior removals had been waived with the approval of the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, she previously filed with United States Citizenship and Immigration Services (USCIS). *Form I-290B, Notice of Appeal or Motion*, dated October 20, 2009.

The evidence of record includes, but is not limited to: counsel's brief; statements from the applicant and her father; documentation relating to the medical conditions of the applicant's father and daughter; and country conditions information on Mexico. The entire record was reviewed and all relevant evidence considered in reaching 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.

The record reflects that, on three occasions, the applicant attempted to enter the United States using entry documents issued to other individuals. On May 9, 1998, the applicant sought admission to the United States by presenting a Form I-551, Resident Alien Card, in the name of [REDACTED] to immigration inspectors at the San Ysidro Port of Entry. She was expeditiously removed from the United States on May 10, 1998 under section 235(b)(1) of the Act and was, thereafter, barred from entering the United States for five years. *Form I-213, Record of Deportable/Inadmissible Alien*, dated May 10, 1998; *Form I-860, Determination of Inadmissibility*, dated May 10, 1998; *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated May 10, 1998. Six days later, on May 16, 1998, the applicant again attempted to gain entry to the

United States at the San Ysidro Port of Entry using a Form I-586, Border Crossing Card, in the name of [REDACTED]. She was expeditiously removed under section 235(b)(1) of the Act for a period of 20 years. *Form I-213, Record of Deportable/Inadmissible Alien*, dated May 16, 1998; *Form I-860, Determination of Inadmissibility*, dated May 16, 1998; *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated May 16, 1998. On May 23, 1998, the applicant attempted to enter the United States a third time by presenting a Mexican passport and nonimmigrant visa in the name of [REDACTED] at the Otay Mesa Port of Entry. She was expeditiously removed under section 235(b)(1) of the Act on May 24, 1998. *Form I-213, Record of Deportable/Inadmissible Alien*, dated May 24, 1998; *Form I-860, Determination of Inadmissibility*, dated May 24, 1998; *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated May 24, 1998. Based on this evidence, the AAO finds the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to obtain admission to the United States through fraud or the willful misrepresentation of a material fact.

Beyond the Field Officer Director's decision, the AAO finds that the applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed from the United States and subsequently reentering the United States without being admitted.<sup>1</sup>

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-

....

(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....

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3<sup>d</sup> Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

In a brief submitted in support of the Form I-290B motion filed by the applicant in response to the Field Office Director's March 1, 2010 denial of the Form I-485, counsel asserts that the applicant is no longer barred by section 212(a)(9)(C)(i)(II) of the Act as she previously filed a Form I-212 that was approved by USCIS on October 4, 2004. The record indicates that the applicant previously filed a Form I-212 that was approved by USCIS on October 6, 2004. The AAO notes, however, that subsequent to the filing of the applicant's appeal, USCIS reopened the Form I-212 on its own motion and denied the application on September 23, 2010. Accordingly, the applicant no longer has an approved Form I-212 that would waive her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

The record indicates that at the time of her September 21, 2009 adjustment interview, the applicant testified that her last entry into the United States had taken place in May 1998 and was without inspection. As the applicant entered the United States without inspection after having been ordered removed, she is subject to section 212(a)(9)(C)(i)(II) of the Act.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, an applicant must have remained outside the United States for at least ten years since his or her last departure. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).<sup>2</sup> The record in the present matter does not establish that the applicant has resided outside the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

In that no purpose would be served by considering the merits of the Form I-601 waiver application under section 212(i) of the Act, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup>The AAO notes the preliminary injunction that was previously entered against the ability of the Department of Homeland Security to follow *Matter of Torres-Garcia*. *Gonzales v. DHS*, 239 F.R.D. 620 (W.D. Wash. 2006). The Ninth Circuit, however, reversed the district court, and ordered the vacating of that injunction. *Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007). In its opinion, the Ninth Circuit held that the Board of Immigration Appeal's decision in *Matter of Torres-Garcia* was entitled to judicial deference. *Gonzales II*, 508 F.3d at 1241-42. The Ninth Circuit's mandate issued 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. [REDACTED] Filed February 6, 2006). Thus, as of the date of this decision, there is no judicial prohibition in force that precludes the AAO from applying the rule laid down in *Matter of Torres-Garcia*.