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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

[redacted]

H5

FILE: [redacted] Office: PHOENIX Date: SEP 29 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

ACTION RECEIVED
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DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona, 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. The Field Office Director found the applicant inadmissible for having misrepresented a material fact to gain entry into the United States.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director, dated September 28, 2007.*

On appeal, counsel states, generally, that the applicant has submitted sufficient evidence to establish extreme hardship. Counsel submits a brief and additional evidence. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that the applicant used a false identity to gain admission to the United States. Counsel does not dispute that the applicant did misrepresent a material fact to gain entry. It is noted, however, that the record is not clear as to the facts and circumstances surrounding the misrepresentation by the applicant as the immigration officer's notes are the only source of this information in the file under review.

The record reflects, however, that the applicant is inadmissible under section 212(a)(9)(C) of the Act for reentering the United States without permission after more than a year of unlawful presence. The record indicates that on August 8, 2007, during an interview before an immigration officer, the applicant testified that in 1987 he entered the United States illegally near San Luis, Arizona; that he applied for amnesty by presenting a Mexican birth certificate belonging to [redacted] Temporary Residency was granted and the applicant received a Temporary Resident card under the Special Agricultural Workers Program in the name of [redacted] that after receiving the Temporary Resident card he used it to gain entry into the United States everyday from 1987 until sometime in 1993 when an immigration officer discovered the deception and seized the Temporary Resident card; and, the applicant was subsequently granted voluntary departure to Mexico. On January 17, 2000 the applicant was apprehended as he attempted to enter the United States, and returned to Mexico. It is noted that the applicant's Biographic Information, Form G-325A, dated April 12, 2007, indicates he was self-employed in Yuma, Arizona, from January 1988 to present. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions, through sometime before his apprehension on January 17, 2000. The applicant's Form I-485 indicates his last entry was without inspection in January 2000. This is confirmed by notes taken at the applicant's Form I-485 interview.

The applicant is, therefore, inadmissible under section (9)(C)(i)(I) of the Immigration and Nationality Act (the Act).

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) 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. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—
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> (1) the alien's having been battered or subjected to extreme cruelty; and
>
> (2) the alien's--
>
> (A) removal;
>
> (B) departure from the United States;
>
> (C) reentry or reentries into the United States; or
>
> (D) 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. *See 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 the United States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant has not departed the United States. He is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver request under Section 212(a)(6)(C) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.