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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: SACRAMENTO, CALIFORNIA  
[REDACTED]

Date:

JAN 31 2011

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: SELF-REPRESENTED

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, Sacramento, California. The decision 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry into the United States by presenting a fraudulent I-586, Border Crossing Card belonging to another person. The applicant was placed in Expedited Removal Proceedings pursuant to section 235(b)(1) of the Act and was subsequently removed from the United States. The applicant re-entered the United States without being inspected, admitted or paroled. The record indicates that the applicant is married to a United States citizen (USC) and is the beneficiary of a Petition for Alien Relative (Form I-130) filed on her behalf by her USC spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative. The AAO sent a facsimile request to counsel on January 24, 2011, granting five business days to submit a Form G-28, however, the requested form was not received. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant

The Field Officer Director found the applicant reentered the United States after removal from the United States without being inspected, admitted or paroled, that she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and that she is not eligible for a waiver. The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 8, 2008.

On appeal, counsel asserts that the Field Office Director erred in denying the applicant's case because the applicant filed for adjustment of status prior to initiation of any further removal proceedings against her, that she was entitled to apply for adjustment of status under section 245(i) of the Act and that she filed a Form I-601, which if successful would have cured any inadmissibility grounds premised on her prior deportation or subsequent illegal entry. See *Form I-290B* dated August 30, 2008 and the accompanying memorandum in support of the appeal.

The record includes, but is not limited to, memorandum in support of the appeal, a copy of a Form W-2 Wage and Tax Statement for 2006, for the applicant's spouse, a copy of a U.S. Individual Income Tax Return (Form 1040), an employment verification letter from the applicant's spouse's employer, copies of various news service articles on wages and housing in Mexico, dated March 23, 2002, and supportive letters from friends. The entire record was reviewed and considered in rendering this decision on the appeal.

In the present case, the record reflects that on May 5, 1999, the applicant attempted to procure entry into the United States by fraud or the willful misrepresentation of a material fact. The applicant was denied admission and was expeditiously removed from the United States on the same date pursuant

to section 235(b)(1) of the Act. Sometime in June 1999, the applicant re-entered the United States without being inspected and admitted or paroled. The record also reflects that on February 12, 1997, the applicant and her husband, [REDACTED] were married in Durango, Mexico. On May 7, 2001, the applicant's husband filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, and the petition was approved on November 8, 2005. The applicant filed an Application to Register Permanent Status (Form I-485) and a Form I-601 on January 14, 2008. On August 8, 2008, the Field Office Director denied the Form I-485 and the Form I-601, finding that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and no purpose would be served in adjudicating the Form I-601.

The evidence in the record shows that the applicant attempted to enter the United States in May 1999 through fraud and was removed from the country. The applicant subsequently re-entered the United States one month after she was removed from the country without being inspected and admitted or paroled. The record does not contain evidence that the applicant applied for and was granted permission to re-enter the United States. Thus, the AAO agrees with the Field Office Director that the applicant is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act.

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....

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply for admission 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 Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007). To avoid inadmissibility under section 212(a)(9)(C) of the Act, the applicant must have departed the United States at least ten years ago, remained outside the United States during that time, and U.S. Citizenship and Immigration Services (USCIS) must consent to the applicant's reapplying for admission. *Id.* at 358, 371; *Matter of Torres-Garcia*, 23 I&N Dec. 866,

873 (BIA 2006), *aff'd.*, *Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9<sup>th</sup> Cir. 2007). The record does not reflect that the applicant in the present matter resided outside of the United States for the required ten years prior to reentry in June 1999.

Counsel asserts that the applicant should be permitted to apply for a waiver because the applicant filed for adjustment of status prior to the initiation of any further removal proceedings against her, that she is entitled to apply for adjustment of status under section 245(i) of the Act and that she filed a Form I-601, which if successful would have cured any inadmissibility grounds premised on her prior deportation or subsequent illegal entry.

As discussed above, the applicant is not eligible to apply for any immigration benefit until she has remained outside of the United States for at least ten years. Thus, counsel's claim that the applicant is eligible to adjust status under section 245(i) of the Act and therefore not subject to the ten year bar is without merit because the applicant first entered the United States in June 1999 and is not eligible to apply for adjustment of status under section 245(i) of the Act. Even if the applicant is eligible to apply under section 245(i), the United States Citizenship and Immigration Service (USCIS) has adopted the position that inadmissibility under section 212(a)(9)(B) or (C) of the Act makes an alien ineligible for adjustment of status under section 245 of the Act, regardless of whether the alien applies under section 245(a) or section 245(i) of the Act. The BIA has endorsed this view. In *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007), the Board held that an alien who is inadmissible under section 212(a)(9)(C)(i)(1) of the Act is not eligible for adjustment under section 245(i) of the Act.

Accordingly, the applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such no purpose would be served in adjudicating her Form I-601 waiver application under section 212(i) of the Act. The appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(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.