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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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Date: JUL 06 2011 Office: GARDEN CITY, NEW YORK, NY

FILE: 

IN RE: Applicant: 

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:



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 District Director, New York, New York 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 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 having misrepresented a material fact to gain entry into the United States. The applicant is married to a citizen of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse.

The District Director denied the waiver application finding that the applicant was inadmissible under provisions of 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 misrepresented a material fact to gain entry into the United States.

On appeal, counsel requests reconsideration. Counsel asserts that the District Director erred in denying the application because the applicant has established that extreme hardship would result for the applicant's United States citizen spouse. Counsel submits a brief and additional evidence. *See Form I-290B and attachments.*

The record reflects that the applicant's United States citizen spouse filed a Petition for Alien Relative (Form I-130) on April 28, 2001, which was approved on July 12, 2005. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), together with an Application for Waiver of Grounds of Inadmissibility (Form I-601), on April 6, 2007. The District Director simultaneously denied the Form I-485, and the Form I-601 on January 27, 2009. *Decision(s) of the District Director*, dated January 27, 2009.

The record reflects that the applicant attempted entry into the United States on May 1, 2001, at the Brownsville Texas Gateway port of entry, by presenting a fraudulently obtained Border Crossing Card. The applicant stated that he had purchased the document for \$1000.00. Under A79 220 854, the applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact to gain entry. The applicant was placed in Removal Proceedings, and was expeditiously removed to Mexico on May 2, 2001. The record also reflects that the applicant subsequently re-entered the United States sometime in July 2001, without inspection. There is no indication that the applicant has since departed the United States.

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. 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—

- (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.

The applicant re-entered the United States without inspection in July 2001, after having been ordered removed. The applicant is, therefore, inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

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 has remained outside the United States for at least 10 years *and* U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant last entered the United States in July 2001 without inspection and has not since departed. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in addressing his inadmissibility under Section 212(a)(6)(C) of the Act.

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.