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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:



Office: FRESNO, CALIFORNIA

Date:

MAR 31 2011

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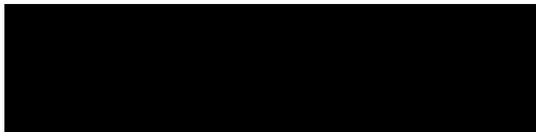
Applicant:



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 Field Office Director, Fresno, California, 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 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 having attempted to procure entry into the United States by fraud or willful misrepresentation. The record indicates that the applicant is the spouse of a United States citizen and she 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 Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 27, 2008.

On appeal, the applicant states that the director failed to evaluate the evidence provided and asserts that the applicant has established extreme hardship to her U.S. citizen husband and children. Counsel submits additional evidence. *See Form I-290B and attachments.*

The record reflects that the applicant first attempted to enter into the United States in 1994 by presenting false documents. She was placed in proceedings and was deported in June 1995. The applicant subsequently entered the United States without inspection in 1996, and sometime later she departed to Mexico. On January 10, 2001, the applicant attempted to re-enter the United States by presenting a Form I-551 belonging to another person. She was removed the same day. On a later unknown date the applicant re-entered the United States without inspection. It is noted that the record also indicates that the applicant filed an asylum application in December 1996 in which she indicated that she was a citizen of El Salvador and had last entered the United States in 1990. USCIS records also reflect that on the basis of her pending asylum application the applicant obtained EAD cards for six consecutive years from March 31, 1998 through January 25, 2005. Her asylum application was denied for abandonment in 2005.

On June 30, 2007, the applicant's husband filed a Form I-130 on behalf of the applicant. Simultaneously with the Form I-130, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and a Form I-601. The Form I-130 was approved on May 7, 2008. The field office director denied the Form I-601 application finding that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Form I-485 application after determining that the applicant was not eligible to adjust status.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir.

1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

In addition to the 212(a)(6)(C)(i) of the Act, the applicant is, also, inadmissible under both section 212(a)(9)(C)(i)(I) and section 212(a)(9)(C)(i)(II) of 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) 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

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(D) attempted reentry into the United States.

An alien who is inadmissible under sections 212(a)(9)(C)(i)(I) and (II), 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 (9th Cir. 2007). In the present matter, the applicant had resided in the United States in unlawful status for over one year and she subsequently attempted entry by fraud or misrepresentation and she was removed from the United States in 2001. Subsequently, on some unknown date, the applicant re-entered the United States without inspection and has not departed the United States. There is no evidence that she remained outside the United States after her last known departure in 2001. The applicant is, therefore, currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under Section 212(i) of the Act.

ORDER: The appeal is dismissed.