



U.S. Citizenship
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Services

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DATE: **MAY 12 2011** Office: PORTLAND, OREGON

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 application was denied by the Field Office Director, Portland, Oregon 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 is 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 procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Field Office Director*, dated December 16, 2008.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion*.

The record reflects that the applicant entered the United States in November 1990 without inspection. *Attorney's brief*. In June 1992, the applicant departed the United States, returning that same month. *Id.* The record does not indicate how the applicant returned to the United States. In October 6, 1997 the applicant again departed the United States. *Id.* On August 8, 1998 the applicant attempted to gain admission to the United States through the San Ysidro Port of Entry by presenting a false document. *Form I-213, Record of Deportable/Inadmissible Alien; Form I-867B, Record of Sworn Statement*. The applicant was ordered removed from the United States. *Form I-860, Notice and Order of Expedited Removal*. Shortly after she was removed from the United States, the applicant again entered the United States without inspection. *Attorney's brief*. The applicant departed the United States to attend an immigrant visa interview at the United States Consulate in Ciudad Juarez, Mexico on May 15, 2000. *Id.* On July 2, 2000 the applicant entered the United States without inspection and was apprehended by U.S. Border Patrol near Nogales, Arizona. *Form I-213, Record of Deportable/Inadmissible Alien*. The applicant's removal order was reinstated and she was removed from the United States on July 6, 2000. In August 2000 the applicant entered the United States without inspection near San Ysidro, California. *Attorney's brief*. As the applicant attempted to gain admission to the United States by using false documentation, she is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed and reentering the United States without being admitted.

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....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, only those individuals who have remained outside the United States for at least ten years since their last departure are eligible for consideration. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record does not reflect that the applicant in the present matter has resided outside of 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 and the AAO finds no purpose would be served in considering the merits of her Form I-601 waiver application under section 212(a)(6)(C)(i) of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.