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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: SANTA ANA, CA

Date **MAY 18 2011**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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 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, Santa Ana, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. He was found to be 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 attempting to enter the United States by presenting a border crossing card belonging to another individual. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).¹

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 30, 2008.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was in error and that the record establishes the applicant's spouse will experience extreme hardship if the applicant is removed.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record indicates that the applicant attempted to enter the United States without inspection in 1997 but was detained and returned to Mexico. The applicant attempted to enter the United States by presenting a Form I-586 Border Crossing Card that belonged to another individual on December 29, 1999. He was detained and admitted that he was returning to resume a two year residence in the United States. He was then processed under expedited removal and barred from re-entering the United States for a period of 5 years. On or about December 1999 the applicant re-entered the United States without inspection and is currently unlawfully present in Simi Valley, California. The District Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act and adjudicated his waiver application under section 212(i) of the Act.

The record supports that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. As the applicant accrued a previous period of unlawful presence in excess of one year, from 1997 to 1999, and then re-entered the United States without inspection subsequent to his 1999 removal under section 235(b), he is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

¹ The record also indicates that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) for having resided unlawfully in the United States for one year or more and seeking entry within ten years of his last departure.

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.

...

An alien who is inadmissible under section 212(a)(9)(C) 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. *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 United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on December 29, 1999 under section 235(b)(1). He subsequently re-entered the United States without inspection and applied to adjust his status in 2005. He is currently inadmissible, and is statutorily ineligible to apply for permission to reapply for admission. *See In Re Briones*, 24 I&N Dec. 355 (BIA 2007); *see also Memorandum, Adjudicating Forms I-212 for Aliens inadmissible under section 212(a)(9)(c) or Subject to Reinstatement Under Section 240(a)(5) of the Immigration and Nationality Act in light of Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), Michael Aytes, Acting Deputy Director, May 19, 2009. As such, he is not eligible for a waiver of his inadmissibility under section 212(a)(9)(C) and no purpose would be served in adjudicating his waiver application under section 212(i) of the Act.

As the applicant is statutorily ineligible for a waiver of his inadmissibility under section 212(a)(9)(C) of the Act, the appeal will be dismissed.

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ORDER: The appeal is dismissed.