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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

PUBLIC COPY



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Date: **MAY 26 2011**

Office: PORTLAND, OR

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the 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, Portland, Oregon. The matter 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)(9)(B)(i)(II) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit; and section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), as an alien unlawfully present in the United States after a previous immigration violation. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The field office director found that the applicant was unlawfully present for more than one year and that she provided false statements in order to obtain a visa to enter the United States on Form OF-156, on Form I-485, and in two sworn statements. Specifically, the field office director found that the applicant falsely claimed she had never attempted to obtain a nonimmigrant visa before she re-entered the United States using a V-1 visa in August 2002. The field office director states that the applicant was specifically asked if she had ever attempted to obtain a nonimmigrant visa on September 12, 2000, and November 8, 2000, in Guadalajara. The applicant stated that she had not, even after being shown the visa applications with her picture and her signature, as well as being shown printouts from the Department of State Bureau of Consular Affairs. The field office director concluded that the applicant must have left the United States prior to her claimed departure, re-entered the United States illegally, and is, therefore, inadmissible under section 212(a)(9)(C) of the Act for which no waiver is available. The field office director further found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated December 16, 2008.

On appeal, the applicant's husband, Mr. ██████████ contends that the applicant did not make any false statements, but rather, forgot she had previously applied for a visa which was denied. Mr. ██████████ contends that his wife was very anxious, but she did not commit fraud. He further contends he would suffer extreme hardship if her waiver application were denied, particularly considering he is almost sixty-five years old and his wife takes care of their five minor children. *Letter from ██████████* ██████████ undated.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. ██████████ indicating they were married on December 4, 1997; copies of the birth certificates of the couple's four U.S. citizen children; two letters from Mr. ██████████; two letters from the applicant; a letter from Mr. ██████████ physician; a letter from the applicant's physician and copies of the applicant's medical records; documents from the couple's children's school; letter from the children's pediatrician; copies of tax returns, bank statements, and other financial documents;

numerous letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

In this case, the applicant claims that she entered the United States without inspection from Tijuana in a car in August 1993 and remained until her departure on April 21, 2001, the day her father died. *Record of Sworn Statement*, dated January 8, 2008; *Letter from* [REDACTED] dated February 4, 2008. She states she remained in Mexico from April 2001 until she was admitted to the United States using a V-1 visa in August 2002. *Letter from* [REDACTED] *supra*. According to the applicant, “[e]xcept for the year and a half that [she] spent out of the US[, she] ha[s] lived [in the United States] continuously since around August of 1993.” *Id.* The applicant states that when she was interviewed by the adjudicating officer:

The fact that I did not remember the first time I went to Mexico is not the same as not saying the truth. I also did not remember the time I went to the Guadalajara to

request the tourist visa, and I still don't remember that particular instance. What I do remember is that back in the year 2001 my father died and I became so ill as a result and I suffered a severe depression that put me in the hospital. I do not know if it was because of my severe depression or due to the medication, but I developed problems with my memory to remember things and events. . . . As of today, I still have a hard time remembering the events to lead to the deceased of my father [sic] and what I did around that sad time in my life.

Affidavit of [REDACTED] dated August 20, 2008; *see also Letter from* [REDACTED] *supra* (stating that his wife has memory problems and that “[e]specially after her father died her problem became more evident”).

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the case, the AAO finds the applicant inadmissible under section 212(a)(9)(C)(i)(I) of the Act and statutorily ineligible for a waiver. The record shows that the applicant applied for a nonimmigrant visa on September 12, 2000, and November 8, 2000, in Guadalajara, Mexico. The applicant does not deny being in Guadalajara and filing these applications, but rather, contends she forgot. Regardless of whether she forgot she was in Guadalajara or not, the applicant concedes she had been living in the United States since August 1993. Although it is unclear precisely when the applicant left the United States for Guadalajara, copies of birth certificates in the record show that the applicant gave birth in the United States to her son, Daniel, on May 17, 1994, and her daughter, [REDACTED] on April 29, 1998. Therefore, the applicant was unlawfully present in the United States for an aggregate period of more than one year. Furthermore, it is unclear precisely when the applicant reentered the United States after her visa applications in Guadalajara were denied. However, by the applicant's own admission, she departed the United States in April 2001 when her father died. Therefore, the applicant must have reentered the United States sometime between November 2000, when she filed a visa application in Guadalajara, and April 2001, when she departed the United States. The applicant has not submitted any evidence to show that she had a visa or other document to reenter the United States legally. Therefore, the applicant was unlawfully present in the United States for an aggregate period of more than one year and reentered the United States without being admitted. Accordingly, the applicant is inadmissible under section 212(a)(9)(C)(i)(I) 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. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Gonzales v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). 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* the United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

Here, the applicant reentered the United States in August 2002 using a V-1 visa and is currently residing in the United States. Therefore, she has not remained outside the United States for ten years since her last departure. Accordingly, she is 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(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), or section 212(i) of the Act, 8 U.S.C. § 1182(i), and the appeal must be dismissed as moot.

ORDER: The appeal is dismissed.