

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**



hts

DATE: Office: PORTLAND, OR FILE: 

IN RE: **MAY 27 2011** Applicant: 

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).

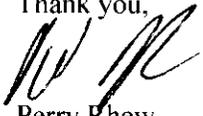
ON BEHALF OF APPLICANT:



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, Portland, Oregon. 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 misrepresenting his identity by presenting the border crossing card of another individual when attempting to enter the United States in December 1999. 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).

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 December 17, 2008.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i). Counsel further asserts that the record establishes the applicant's spouse will experience extreme hardship due to the living conditions in Mexico, and the facts that she has been diagnosed with depression and is in danger of losing a real property and a vehicle in the United States.

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 with the border crossing card of another individual in December 1999, and was removed under the provision of § 235(b) of the Act. The applicant subsequently re-entered the United States without inspection and currently resides in Washington State.

On appeal, counsel states that the applicant is not inadmissible under INA §212(a)(6)(C)(i) because the misrepresentation occurred more than five years ago and, therefore, this ground of inadmissibility has "expired." As support for this, counsel cites *Li v. Eddy*, 324 F.3d 1109 (9<sup>th</sup> Cir. 2003). In that case, the alien sought judicial review of an expedited order of removal which had been entered against her. The court held that, since more than five years had passed since the order of removal, the alien was no longer inadmissible under INA §212(a)(9)(A) and the appeal was dismissed as moot. In addition, as noted by counsel, the court further stated that the alien would also not be inadmissible under INA §212(a)(6)(C)(i), apparently applying a five-year limitation to that section as well. *Id.* at 1110. However, the issue of the alien's admissibility under INA §212(a)(6)(C)(i) was not before the court and therefore the statements regarding INA

§212(a)(6)(C)(i) were not a part of the court's holding. *See Li v. Eddy*, 259 F.3d 1132, 1134 (9<sup>th</sup> Cir. 2001), *vacated on reh'g as moot*, 324 F.3d 1109 (9<sup>th</sup> Cir.2003). (noting, pursuant to INA §242(e)(5), that a court reviewing an order of removal may not review the issue of the alien's admissibility).

The AAO is bound by decisions from the circuit court of appeals for cases originating within the circuit. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9<sup>th</sup> Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit). However, as explained above, the 9<sup>th</sup> circuit's statements in *Li v. Eddy* regarding the applicability of 212(a)(6)(C) were not a part of the court's holding in that case. Thus, the AAO is not bound by those statements.

The AAO notes that the applicant is inadmissible under an additional, separate provision of the Act. As the applicant was previously removed in a section 235(b) proceeding and then re-entered the United States without inspection, he is inadmissible pursuant to section 212(a)(9)(C)(i)(II).

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.

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'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 in December 1999, and he re-entered in the same month and has remained in the United States. Thus, he has not remained outside the United States for the requisite 10 year period. 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 (9<sup>th</sup> Cir. 2007), Michael Aytes, Acting Deputy Director, May 19, 2009. As such, no purpose would be served in adjudicating his waiver application.

Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.