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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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DATE: OFFICE: CHICAGO, ILLINOIS

File: [REDACTED]

NOV 14 2011

IN RE: Applicant: [REDACTED]

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, Chicago, Illinois 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was further found to be inadmissible under section 212(9)(C) of the Act for having been ordered removed under section 235(b)(1) or section 240 and entering the United States without being admitted. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. The Field Office Director also found that the applicant was not eligible for an exception to or waiver of inadmissibility under section 212(a)(9)(c) of the Act. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. See *Decision of the Field Office Director*, dated June 10, 2009.

On appeal, counsel asserts that the denial of the applicant's I-601 waiver was based on a misconstruction of fact and law, and that extreme hardship should have been found. See *Form I-290B*, Notice of Appeal or Motion, received July 13, 2009.

The record includes, but is not limited to: Form I-290B and counsel's brief in support thereof; Forms I-601 and I-485 and denials of each; hardship letter from the applicant's spouse; pediatrician's letter concerning the applicant's son, [REDACTED] marriage and birth certificates; tax and financial records; employment verification letters; character reference letter; removal and inadmissibility records; and Form I-130. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) 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.

The record reflects that the applicant presented the Mexican passport of another individual, containing an ADIT stamp, when seeking to procure admission to the United States through the Calexico, California port of entry on February 21, 2009. Based on this misrepresentation, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) 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.

An applicant who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless more than 10 years have elapsed since the date of the applicant's last departure from the United States. *See Matter of Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007); *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 of the United States during that time, *and* that USCIS has consented to the applicant's reapplying for admission. *Matter of Briones*, 24 I&N Dec. at 358, 371; *Matter of Torres-Garcia*, 23 I&N Dec. at 873. *aff'd.*, *Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007).

In the present matter, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act because she was removed under section 235(b)(1) of the Act on February 22, 1999 and she subsequently entered the United States without inspection later that year. The applicant has not departed the U.S. since her 1999 entry without inspection. As the applicant has not been outside of the United States for a period of ten years, she is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, no purpose would be served in adjudicating her waiver under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that she has not shown that a purpose would be served in adjudicating her waiver under section 212(i) of the Act due to

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her inadmissibility under section 212(a)(9)(C) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.