

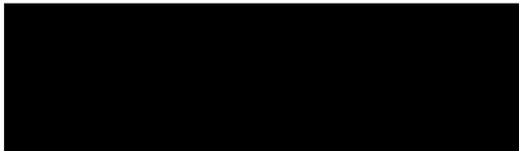
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
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DATE: Office: LOS ANGELES, CA

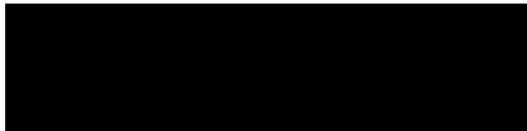
FILE:

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IN RE: Applicant

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be 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 seeking to procure a United States immigration benefit through fraud or misrepresentation; and section 212(a)(9)(B)(i)(II) of 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 and seeking readmission within ten years of her last departure from the United States. She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) August 4, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director applied a stricter standard than extreme hardship and failed to consider the hardship factors in the aggregate. *Form I-290B*, received September 2, 2009.

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

(i) In general. - 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.

The record reflects that the applicant entered the United States without inspection in September, 1989. The record further reflects that the applicant departed the United States in or around September, 1998. The applicant accrued unlawful presence for a period of more than one year from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until her departure in or around September, 1998. The record further reflects that the applicant attempted to re-enter the United States on October 14, 1998, by presenting the Form I-551, Resident Alien Card, of another person. The applicant was detained and removed in an expedited removal proceeding pursuant to section 235(b)(1) of the Act. The record reflects that the applicant re-entered the United States without inspection a short time after her removal and has remained in the United States since that

time. Therefore, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding on appeal.

The AAO also finds that the applicant attempted to procure admission to the United States through willful misrepresentation of a material fact.

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.

Specifically, as noted above, the applicant attempted to procure admission to the United States by presenting the Resident Alien Card of another person. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

In addition, the AAO finds that the applicant is inadmissible pursuant to Section 212(a)(9) of the Act, which 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.

As noted above, the applicant departed the United States in or around September 1998, after having accrued more than one year of unlawful presence, from April 1, 1997, the effective date of the

unlawful presence provision of the Act, until in or around September 1998. The applicant was removed in an expedited proceeding on October 17, 1998, pursuant to section 235(b)(1) of the Act. She then re-entered the United States without inspection in or around November 1998. Therefore, the applicant is inadmissible under sections 212(a)(9)(C)(i)(I) and (II) 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. *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. The record does not reflect that the applicant in the present matter has met these requirements. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under sections 212(a)(9)(C)(i)(I) and (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 sections 212(a)(9)(B)(v) and 212(i) of the Act. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.