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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

H5

Date: OCT 0 5 2011 Office: FRESNO, CA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Fresno, California. 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)(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. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to 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 applicant was also found inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having reentered the United States without inspection after having been removed. *Decision of the Field Office Director*, dated June 17, 2009. It was on this basis that the applicant's Form I-485 Application to Register Permanent Residence or Adjust Status (Form I-485) was denied.

With regard to the Form I-601, the field office director found that the applicant's Form I-485 had been denied and, as the applicant no longer had a pending application for adjustment of status, the applicant's waiver application must be denied accordingly. *Decision of the Field Office Director,* dated June 17, 2009.

On appeal, counsel contends that "in [redacted] a petition for rehearing was filed on June 22, 2009 with the 9th Circuit Court of Appeals arguing that the class could be redefined to include those individuals who had filed their waiver applications before [redacted] was decided." According to counsel, the applicant's waiver application "is included in the redefined class of [redacted]" and the holding in the applicant's case is dependent upon the court's decision in [redacted]. *Notice of Appeal or Motion (Form I-290B)*, dated July 13, 2009.

Counsel does not provide a citation for the "[redacted]" case, however, the AAO assumes counsel is referring to [redacted] *v. Dep't of Homeland Sec.*, 508 F.3d 1227 (9th Cir. 2007) in which inadmissible aliens who filed I-212 waiver applications in conjunction with their applications for adjustment of status requested class certification and preliminary injunction restraining federal defendants from applying or enforcing Department of Homeland Security (DHS) policy of denying I-212 applications where the applicant was inadmissible and ten years had not elapsed since the date of the applicant's last departure from the United States. The AAO notes that *Gonzales v. Dep't of Homeland Sec.* was vacated on November 30, 2007, without finding in favor of the plaintiffs, therefore, any contention regarding the applicant's eligibility under that case is moot.

A Form I-601 waiver application is viable when there is a pending adjustment of status application (Form I-485) or immigrant visa application. In this case, the record reflects that the applicant's Form I-485 was denied on June 17, 2009, because the applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having been removed from the United States on March 20, 1999, and reentering the United States without inspection that same month. The field office director found that pursuant to *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), the applicant was ineligible

for relief of this inadmissibility through the filing of a Form I-212 Application for Permission to Reapply for Admission (Form I-212) until she had been outside the United States for ten years, and denied the Form I-485 accordingly.

Because the applicant does not have an underlying adjustment application to support the filing of her Form I-601 waiver application, and, because the applicant must remain outside the United States for ten years before applying for any relief, no purpose would be served in adjudicating the applicant's Form I-601 and examining the hardship to the applicant's husband.

ORDER: The appeal is dismissed.