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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**

[REDACTED]

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DATE: SEP 19 2011 Office: SAN BERNARDINO, CA

FILE: [REDACTED]

IN RE: [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:

[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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Bernardino, 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 4, 2009.

On appeal, counsel asserts that a favorable decision and exercise of discretion are warranted, based on case law and the evidence presented by the applicant. Counsel contends that the applicant's spouse will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B, Notice of Appeal or Motion*, dated June 24, 2009; *see also, counsel's brief*, dated July 22, 2009.

The record includes, but is not limited to, a statement from the applicant's spouse; counsel's brief; copies of reports from an Individualized Education Program (IEP) relating to the applicant's son; employment letters for the applicant and her spouse; copies of W-2s, earnings statements and tax returns; and documents relating to the applicant's expedited removal proceedings. The entire record was reviewed and all relevant evidence considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.

....

The record reflects that on September 9, 1999, the applicant attempted to enter the United States by presenting a valid Form I-551 in the name of [REDACTED]. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having attempted to procure an immigration benefit through fraud or the willful misrepresentation of a material fact.

The AAO notes that in her decision to deny the applicant's Form I-601 application, the Field Office Director does discuss the applicant's inadmissibility under section 212(a)(9)(C)(i) of the Act. However, in her decision to deny the Form I-485 application, the Field Office Director found the applicant to be subject to section 212(a)(9)(C)(i) of the Act for reentering the United States without inspection after having been ordered removed under section 235(b)(1) of the Act.

Section 212(a)(9)(C) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

The record reflects that following her September 9, 1999 attempt to enter the United States using another individual's Form I-551, the applicant was placed in Expedited Removal Proceedings and ordered removed from the United States on this same date pursuant to section 235(b)(1) of the Act. The applicant indicated on her Form I-485, Application to Register Permanent Resident or Adjust Status, that she last entered the United States without inspection on September 10, 1999. Based on the evidence of record, the AAO finds that the applicant reentered the United States without inspection after having been removed from the United States under section 235(b)(1) of the Act. She is therefore inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, an applicant must remain outside the United States for at least ten years following his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record in the present matter does not establish that the applicant has resided outside the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i) of the Act.

As the applicant is not eligible to receive an exception from her section 212(a)(9)(C)(i) inadmissibility, the AAO finds no purpose would be served in considering whether she is eligible for a waiver of inadmissibility under sections 212(i) of the Act. The appeal will therefore be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden.

**ORDER:** The appeal is dismissed.