

**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

**PUBLIC COPY**



**U.S. Citizenship  
and Immigration  
Services**

[REDACTED]

H5

DATE: **SEP 23 2011** OFFICE: PORTLAND, OR FILE: [REDACTED]

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:

[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, Portland, Oregon, and 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 by fraud or willfully misrepresenting a material fact. The applicant is the spouse of a Lawful Permanent Resident of the United States. 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 that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 11, 2009.

On appeal, counsel asserts that the applicant has established extreme hardship to her lawful permanent resident spouse. Counsel submits a brief and additional evidence.

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.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that on May 5, 2000 the applicant attempted to enter the United States at the Calexico Port-of-Entry by presenting a Form I-586, Border Crossing Card, belonging to another person. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to enter the United States through fraud or willful misrepresentation of a material fact.

Beyond the decision of the field office director, the applicant is also inadmissible under section 212(a)(9)(C)(i)(II), of the Act. It is noted that while inadmissibility under section 212(a)(9)(C) of the Act is not mentioned in the denial of the Form I-601, the field office director referenced the inadmissibility provision in the February 11, 2009 denials of the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) and Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212).

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. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

- (1) the alien's having been battered or subjected to extreme cruelty; and
- (2) the alien's--
  - (A) removal;
  - (B) departure from the United States;
  - (C) reentry or reentries into the United States; or
  - (D) attempted reentry into the United States.

The record reflects that following her attempt to enter the United States on May 5, 2000, the applicant was removed from the United States under Section 235(b)(1) of the Act. On the Form I-485, the applicant indicated that she last entered the United States without inspection in May 2000. The applicant is, therefore, also inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act for having entered the United States without inspection after being previously ordered removed.

To avoid inadmissibility under section 212(a)(9)(C) of the Act, an applicant must have departed the United States at least ten years ago, remained outside the United States during that time, and U.S. Citizenship and Immigration Services (USCIS) must consent to the applicant's reapplying for admission. *Id.* at 358, 371; *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006), *aff'd.*, *Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9<sup>th</sup> Cir. 2007). In the present matter, the applicant was removed from the United States on May 5, 2000, but returned in May 2000, without inspection. She has continued to reside here unlawfully since her last entry. The applicant is, therefore, ineligible to apply for permission to reapply for admission.

As the applicant is statutorily ineligible to receive an exception under section 212(a)(9)(C)(ii) of the Act, the AAO finds that 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) 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.