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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**



H5

DATE: **SEP 28 2010** Office: SAN BERNARDINO, CA

FILE:

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).

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 applicant is a native and a citizen of Mexico who used false documents in an attempt to enter the United States. The applicant 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). She is the wife 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) on June 8, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse would face extreme hardship as a result of having to raise his two children in the applicant's absence. *Form I-290B*, received July 10, 2009.

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.

The record indicates that the applicant presented a form I-551, Resident Alien Card, not lawfully issued to her when attempting to enter the United States in 1999. She was detained and ordered removed under section 235(b)(1) of the Act. Based on her 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. 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 applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Act on February 21, 1999. The applicant then re-entered the United States shortly thereafter without inspection. As the applicant was removed pursuant to a section 235(b)(1) proceeding, then re-entered without inspection, she is inadmissible under section 212(a)(9)(C)(i)(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* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant has not remained outside the United States for a period of ten years. She is currently inadmissible, and is statutorily ineligible to apply for permission to reapply for admission. *See In Re Briones*, 24 I&N Dec. 355 (BIA 2007); *see also Memorandum, Adjudicating Forms I-212 for Aliens inadmissible under section 212(a)(9)(c) or Subject to Reinstatement Under Section 240(a)(5) of the Immigration and Nationality Act in light of Gonzalez v. DHS*, 508 F.3d 1227 (9th

Cir. 2007), Michael Aytes, Acting Deputy Director, May 19, 2009. As such, no purpose would be served in adjudicating her waiver application.

As the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, the AAO finds no purpose would be served in considering the merits of her Form I-601 waiver application under section 212(i) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.