

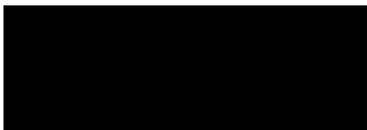
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services



H5

DATE **APR 20 2012**

OFFICE: LOS ANGELES, CALIFORNIA

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 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 Field Office Director, Los Angeles, California, denied the waiver application (Form I-601) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident spouse and U.S. citizen children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated May 7, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship of an emotional, physical, medical, and economic nature if the waiver is not granted. See *Counsel's Brief*, received June 29, 2009

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601 and denial letter; applicant's declaration; hardship declaration; letters from family and friends; medical and related records for the applicant's spouse and children; printouts related to Mexico; Forms I-485 and I-130; previously submitted Forms I-212, I-539, Notice of Intent to Deny, and 2002 hardship letter; and the applicant's inadmissibility and removal records. The entire record was reviewed in rendering a decision on appeal.

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

- (i) 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.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in

extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant sought to procure admission to the United States on May 30, 1998, by presenting a Form I-94 bearing another individual's name and a photo-substituted temporary U.S. resident stamp. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act. She was expeditiously removed from the United States on the same date for a period of five (5) years. The applicant entered the United States without inspection in or about September 1998 and has resided in the United States ever since.

Accordingly, the AAO finds that the applicant is also inadmissible under section 212(a)(9)(C) of the Act which states, in pertinent part:

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. . . .

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 ten 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* U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

In the present matter, the applicant is inadmissible under section 212(a)(9)(C) of the Act due to the fact that she was removed from the United States to Mexico on May 30, 1998, subsequently entered the United States without inspection later the same year, and has not been outside of the United States for a total of ten years following her May 30, 1998 removal. The applicant

testified during her September 3, 2008 adjustment of status interview that following her removal, she entered the United States without inspection in September 1998. In a letter to USCIS, dated September 16, 2002, the applicant's spouse states that his wife has worked extremely hard to establish her family in the U.S. and if she "gets deported I feel that my children and I will suffer..." The applicant filed Form I-212, Application for Permission to Reapply for Admission into the United States, on October 10, 2002. In an attachment thereto, she states: "If I get deported from USA my family and myself will be in a very hard situation..." Additionally, the applicant gave birth to her daughter, [REDACTED] in the United States on March 11, 2005. The evidence shows that the applicant has not been outside of the United States for a total of ten years following her May 30, 1998 removal. Accordingly, she is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(i) of the Act.

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. The applicant in the instant case has not met that burden, in that she has not shown that a purpose would be served in adjudicating her waiver under section 212(i) of the Act due to her inadmissibility under section 212(a)(9)(C) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.