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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: **APR 24 2012** Office: SANTA ANA, 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 (the 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 waiver application was denied by the Field Office Director, Santa Ana, 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 the Philippines 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 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 in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 16, 2009. The applicant filed an appeal with the AAO. On December 15, 2011, the AAO issued a Notice of Intent to Dismiss the appeal requesting the applicant submit an affidavit and other documentary evidence, if any, addressing whether the applicant is ineligible for a waiver pursuant to section 212(a)(9)(C) of the Act for entering the United States without inspection after being removed. Specifically, the record shows, and the applicant concedes, that she attempted to enter the United States in May 2000 by using a name other than her own and was removed from the United States on May 23, 2000. According to the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) and the applicant's waiver application, the applicant entered the United States without inspection in September of 2000. However, according to the applicant's sworn statement in the record, on September 30, 2000, she entered the United States in a van through Tijuana. The applicant further stated in her sworn statement that there were six people in the van, that she did not have a fake green card or U.S. birth certificate, and that she had her own passport with her.

In response to the Notice of Intent to Dismiss, the applicant submits a two-page declaration. The applicant states she first tried to enter the United States in May 2000 at Newark, New Jersey, using a passport provided to her by [REDACTED] but was detained and returned to the Philippines a couple of days later. The applicant further states that she entered the United States in September 2000 at the airport in Miami, Florida. According to the applicant, she flew to the United States from Manila on Air France and used a Philippines passport with a U.S. visitor's visa under someone else's name. She states that the passport was again provided by [REDACTED]. She contends the immigration officer at the airport looked at her passport and asked her about her plans. She states she told the officer she was visiting the United States and that the officer stamped the passport and the Form I-94. She contends she travelled to California from Miami and returned the passport to [REDACTED]. In addition, she contends she has tried to locate [REDACTED] but learned that he died a number of years ago. Furthermore, the applicant states that her former attorney instructed her to state that she had entered the United States through Tijuana in the back of a van. According to the applicant, her former attorney told her "this was the easiest way to get a Green Card because if I admitted I came in using a passport and visa with someone else's name I would be denied."

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise

attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant is ineligible for a waiver. 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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

In this case, the AAO finds that the applicant has not met her burden of showing she was admitted to the United States in September 2000. Rather than provide a detailed, plausible description of her entry, the applicant's declaration merely claims she was admitted to the United States by an

immigration officer in Miami who only asked her “what [she] planned to do.” The applicant does not provide any specifics regarding her alleged entry, such as whether she traveled with her husband or any other friend or relative, whether anyone picked her up from the airport at Miami, how she traveled from Miami to California, and whether she made this purported trip alone or with others. There are no affidavits or letters of support from others to corroborate the applicant’s claim that she was admitted to the United States in Miami. In addition, the declaration contradicts the applicant’s sworn statement in the record. According to the applicant’s recent declaration, she obtained two fraudulent passports from a person named [REDACTED]. The applicant mentions [REDACTED] four times in her declaration. However, according to her sworn statement from May 2000, she obtained her fraudulent documents from [REDACTED] . . . from [REDACTED]. *Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act (Form I-867A)*, dated May 21, 2000 (“I got everything from [REDACTED] “I got [the visa] from [REDACTED] [REDACTED] gave me the address and said that somebody would pick me up from the airport”). There is no explanation explaining this inconsistency. Furthermore, the applicant’s contention that her former attorney instructed her not to admit that she entered the United States using fraudulent documents in September 2000 seems implausible considering she had already conceded to using fraudulent documents for her attempted entry in May 2000. In sum, the applicant’s declaration in response to the Notice of Intent to Dismiss does not meet her burden of providing competent, objective evidence pointing to where the truth lies to resolve the inconsistencies in the record.

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). In *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), the Ninth Circuit overturned its previous decision, *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), and deferred to the BIA’s holding that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-year bar. The Ninth Circuit clarified that its holding in *Duran Gonzalez* applies retroactively, even to those aliens who had Form I-212 applications pending before *Perez Gonzalez* was overturned. *Morales-Izquierdo v. DHS*, 600 F.3d 1076 (9th Cir. 2010). *See also Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (stating that the general default principle is that a court’s decisions apply retroactively to all cases still pending before the courts).

Therefore, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The applicant’s last departure from the United States occurred in May 2000 and she is currently residing in the United States. Thus, she has not remained outside the United States for ten years since her last departure. 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 and the appeal must be dismissed as moot.

ORDER: The appeal is dismissed.