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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., NW, MS 2090  
Washington, DC 20529-2090



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

H5

DATE: **APR 30 2012**

OFFICE: LOS ANGELES, CA

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in cursive script, appearing to read "Perry Riew".

Perry Riew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Field Office Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by fraud. The applicant seeks a waiver of inadmissibility under section 212(i), 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen husband.

The applicant is also inadmissible under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I) for having been ordered removed on two occasions, and seeking admission within twenty years of removal. In addition, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for entering the United States without admission after having been removed. The applicant must obtain consent from USCIS in order to apply for admission into the United States by filing an Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212). The applicant has filed Form I-212, the appeal of which is addressed in a separate decision.

In a decision dated July 17, 2009, the director found the applicant had failed to establish that a qualifying relative would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

The applicant asserts on appeal that the director failed to examine all of the hardship evidence in her case, the cumulative effect of hardship her husband would experience was not analyzed, and the director applied an impossibly high hardship standard to her case.<sup>1</sup> The applicant additionally contests that she is statutorily barred from applying for permission to reapply for admission, because more than ten years have passed since her last departure from the United States. She states that it is impermissibly retroactive to apply current case law in her case. The entire record was reviewed and considered in rendering a decision on the 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.

Under section 212(i) of the Act:

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<sup>1</sup> The record contains a Form G-28, Notice of Appearance as Attorney or Representative (Form G-28) signed by attorney, [REDACTED]. However, the G-28 does not contain a signature from the applicant, consenting to the representation. "Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted." 8 C.F.R. § 103.2(a)(3).

- 1) The [Secretary] may, in the discretion of the [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 [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 attempted to gain admission into the United States by using a border crossing card issued in the name of another individual on August 29, 1997, and on September 3, 1997. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for attempting to procure admission into the United States through fraud. The record additionally reflects the applicant was ordered removed from the United States on August 29, 1997 and again on September 3, 1997, when she attempted to gain admission into the United States with a fraudulent border crossing card. Less than twenty years have passed since the applicant's last removal from the U.S. The applicant is therefore inadmissible pursuant to section 212(a)(9)(A)(i)(II) of the Act, and she must request permission to reapply for admission into the United States, as set forth in section 212(a)(9)(A)(iii) of the Act. The applicant does not contest her inadmissibility.

Section 212(a)(9)(C) of the Act provides in pertinent part that:

(i) [A]ny alien who-

...

(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) [C]lause (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 applicant re-entered the United States without admission in July 1999, and she has remained in the United States since that time. Accordingly she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and she must request permission to reapply for admission into the United States, as set forth in section 212(a)(9)(C)(ii) of the Act.

The applicant's assertions that more than ten years have passed since her last departure from the United States and that it is impermissibly retroactive to apply current law in her case because she relied on a previous Ninth Circuit Court of Appeals decision, *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 in filing her Form I-212, are unconvincing. The AAO notes the applicant's Form I-212 was filed in 2002, before the issuance of the 2004 *Perez-Gonzalez* decision. Moreover, the Board of Immigration Appeals (BIA) and the Ninth Circuit Court of Appeals, under whose jurisdiction this case arises, have clearly held that an alien who is inadmissible under section 212(a)(9)(C) of the Act may not be granted Form I-212, 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 Gonzales 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) of the Act bars aliens subject to its provisions from receiving discretionary waivers of inadmissibility prior to the expiration of the ten-year bar. The Ninth Circuit clarified that its holding in *Duran Gonzales* 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 *Duran Gonzales v. DHS*, 659 F.3d 930 (9<sup>th</sup> Cir. 2011) (affirming the district court's order denying the plaintiff's motions to amend its class certification and declining to apply *Duran Gonzales* prospectively only); *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).

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 is currently residing in the U.S. Because the applicant has not remained outside of the U.S. for ten years since her last departure, she is currently statutorily ineligible to apply for Form I-212 permission to reapply for admission.<sup>2</sup> As such, no purpose would be served in adjudicating her waiver appeal under section 212(i) of the Act. The appeal shall therefore be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> A separate Form I-212 was denied by the Field Office Director on July 17, 2009. An appeal of the denial was dismissed by the AAO pursuant to section 212(a)(9)(C)(ii) of the Act.