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



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DATE: **AUG 02 2012**

OFFICE: INDIANAPOLIS, IN

FILE: 

IN RE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Form I-601, Application for Waiver of Inadmissibility (Form I-601) was denied by the Field Office Director, Indianapolis, Indiana, and 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 admission into the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). The applicant 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 with her husband.

The applicant also is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed, and seeking admission within five 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. No Form I-601 waivers correspond to these grounds of inadmissibility. Rather, the applicant must obtain consent from USCIS in order to apply for admission into the United States by filing Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal.

In a decision dated January 30, 2009, the director determined the applicant failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The Form I-601 waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that her U.S. citizen husband will experience extreme hardship if she is denied admission into the United States. In support of this assertion, counsel submits a letter from the applicant's husband, medical records, photographs, financial evidence, and academic records for their children. The entire record was reviewed and considered in rendering a decision on the appeal.

It is noted that the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any 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]ause (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 was expeditiously removed from the United States on January 24, 1998. The record contains no evidence of her subsequent lawful admission. However, the applicant's marriage certificate reflects that she and her husband married in Los Angeles, California on April 12, 2001; the Form I-130 and Form G-325A, Biographic Information, signed by the applicant in April 2001 reflect she lived in Long Beach, California from March 1996 to April 1998, and from April 1998 until the forms were filed in April 2001; and her Form I-485, Application to Register Permanent Residence or Adjust Status reflects that one of their daughters was born in the United States on March 1, 1999. This evidence in the record indicates that the applicant reentered the United States without permission or admission within ten years of her removal. The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and she requires permission to reapply for admission into the United States, as set forth in section 212(a)(9)(C)(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 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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 United States and therefore, has not remained outside the United States for ten years since her last departure. 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. The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.