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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 0 7 2012 OFFICE: NEW DELHI, INDIA [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

[redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(6)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i)(II), for attempting to procure admission into the United States by willful misrepresentation of a material fact, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her departure. The applicant seeks waivers of inadmissibility pursuant to sections 212(i), 8 U.S.C. § 1182(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen husband and children.[1]

The applicant was also found to be inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for unlawfully reentering the United States after having been ordered removed. She is additionally inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(A)(i), for having been ordered removed, and seeking admission within five years of her removal. The applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) must be approved to overcome these grounds of inadmissibility.[2]

In a decision dated February 23, 2011, the director concluded the applicant was statutorily barred from filing Form I-212 until she remained outside of the United States for ten years, as set forth in section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II). The applicant's waiver application was denied accordingly, in the exercise of discretion.

On appeal, counsel contests that the applicant is inadmissible under sections 212(a)(9)(C)(i)(II) and 212(a)(9)(B)(i)(II) of the Act. Specifically, counsel asserts that the applicant was lawfully admitted into the United States in January 2003, but that she has no official evidence of her admission because she was a Canadian landed immigrant and citizen of a British Commonwealth country, and under U.S. immigration policy at the time she was exempt from visa admission requirements. Counsel asserts that other evidence in the record, including affidavits and immigration applications, establishes the applicant's admission into the United States in January 2003. Counsel additionally asserts that under U.S. Department of State policy in January 2003, individuals admitted from Canada without a Form I-94 were admitted as visitors for "duration of

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[1] Previously filed Form I-601 and Form I-212 applications were denied in December 2008 and June 2010, based on ineligibility under section 212(a)(9)(C)(i)(II) of the Act. The previous denial decisions were not appealed to the AAO.

[2] The applicant's most recently filed Form I-212 was denied by the Field Office Director, New Delhi, India on February 18, 2011, and has not been appealed.

status." Counsel concludes the applicant's presence in the United States after January 2003 therefore was lawful, and she is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. To support these assertions, counsel submits Canadian landed immigrant status documentation and articles discussing 2003 U.S. admission requirements for Canadian landed immigrants. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. He asserts that the applicant's U.S. citizen husband would experience extreme financial and emotional hardship if the applicant were denied admission into the United States. To support the hardship assertions, counsel submits letters from the applicant, her husband, family members and friends; financial evidence; psychological evaluations; family photographs; academic information; and country-conditions information.

Through her husband, the applicant also submits a separate letter on appeal indicating she was deported pursuant to an "involuntary expedited removal" order, in violation of her civil rights; she should have been granted voluntary departure; and she asks the AAO to subpoena the officer who deported her in February 2000.

The AAO notes that it does not have subpoena authority or appellate jurisdiction over civil rights issues. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO cannot exercise appellate jurisdiction over additional matters on its own volition or at the request of an applicant.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
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> . . .
>
> (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.

In the present matter, the record reflects that the applicant was removed from the United States on February 18, 2000 for attempting to procure admission into the country through willful misrepresentation of a material fact, in violation of section 212(a)(6)(C) of the Act . The record contains a birth certificate reflecting the applicant gave birth to her son in Texas on 2004. However, the record contains no documentary evidence to establish that the applicant was lawfully admitted into the United States after her removal from the country on February 18, 2000.

Counsel asserts that the applicant has consistently stated in all immigration benefits applications that she was lawfully admitted into the United States in January 2003. Counsel asserts that the applicant did not receive an admission stamp or Form I-94 to reflect her January 2003 admission because she was a Canadian landed immigrant and exempt from visa requirements pursuant to U.S. admission policies in effect at the time.

A U.S. Department of State cable (No. 2003-State-29504), sent on February 1, 2003, to all diplomatic and consular posts discusses changing the admission requirements for Canadian landed immigrants, including citizens of designated Commonwealth countries, to require a valid passport and visa. The new rule went into effect on March 17, 2003. *See* Federal Register, Vol. 68, No. 21, Interim Rule, Part VII, "*Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda,*" dated January 31, 2003.

The applicant is a citizen of India, which is listed at 9 FAM 41.2. Exhibit I, as a Commonwealth country. Evidence in the record additionally establishes the applicant obtained Canadian landed immigrant status on September 20, 2001.

The AAO notes that the admission policy that existed prior to March 17, 2003, allowing Canadian landed immigrants from India to be admitted into the United States without a passport or visa, applied to *admissible* aliens. This policy did not remove or waive the requirement for aliens inadmissible under section 212(a)(9)(A) of the Act to obtain permission to reapply for admission, using Form I-212, prior to seeking admission into the United States.

In the present case, the applicant was inadmissible under section 212(a)(9)(A)(i) of the Act, based on her expedited removal in February 2000. The record contains the applicant's Form I-296, Notice to Alien Ordered Removed, dated February 18, 2000, informing the applicant that she was prohibited from entering the United States for five years from the date of her departure from the country, and explaining that in order to apply for admission into the United States prior to the expiration of the five-year time period, she must obtain permission by filing Form I-212. The Form I-296 contains the applicant's signature, as well as her initials next to the section concerning her inadmissibility. The applicant therefore was aware of her readmission requirements. The applicant submits no evidence that she filed a Form I-212 or received Form I-212 approval prior to her re-entry into the United States.

The AAO finds further that the evidence submitted on appeal fails to establish that the applicant entered the United States in January 2003, or that she was lawfully admitted into the United States at any time after her removal from the country in 2000.

To support the assertion that the applicant was lawfully admitted into the United States in January 2003, counsel submits June 12, 2010 letters from friends attesting to the applicant's presence in the United States since January 2003, and stating they picked the applicant and her son up from the Flint, Michigan train station in early January 2003. A June 2010 email reflects the applicant contacted Amtrak asking for evidence of her January 2003 travel between Canada and the United States. Amtrak personnel indicated they would respond within a week. However, counsel submits no additional information from Amtrak regarding the applicant's travel.

A letter from a bank in Texas, dated April 9, 2007, states the applicant has been a customer since January 8, 2003. Counsel also submits check payment receipts, which are copies of the applicant's personal checks written to [redacted] claiming that this evidence shows the applicant paid for her son's childcare in the United States in January and February 2003. The applicant does not submit payment receipts from the actual child care center and the submitted receipts do not reflect the child care center's location or that the applicant's checks were cashed by a child care center in the United States. Moreover, payment of childcare expenses does not demonstrate the applicant's presence in the United States at time of payment, or that the applicant was lawfully admitted into the United States.

Counsel also asserts the Service granted their son's adjustment of status application in 2005 and therefore must have determined their son was lawfully admitted into the United States. Because the applicant entered the United States with their son, counsel concludes the same conclusions should be reached in the applicant's case, pursuant to collateral estoppel principles. The AAO notes the findings made in the applicant's son's adjustment of status case have no binding precedential value for purposes of the applicant's case. *See* 8 C.F.R. § 103.3(c). The burden of proof remains with the applicant to show by a preponderance of the evidence that she is not inadmissible. *See* Section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the evidence in the record fails to establish, by a preponderance of the evidence that the applicant is not inadmissible.

In addition to the evidence submitted on appeal by counsel, the applicant separately submits a pediatric medical report indicating on the first page, that her son was seen on "1/18/03." It is noted, however, that the second page of the medical report refers to an examination that took place on "11/18/03." Moreover, the report does not contain the name or location of the medical center where the examination took place. The applicant also submits a medical record for [redacted] dated January 27, 2003. The medical record is partial and incomplete, however, and does not contain the applicant's full name or clearly establish that it pertains to the applicant. The medical record also does not state where or by whom the medical examination was done. In addition, the applicant submits medical laboratory report and insurance explanation of benefits statements indicating she was referred for laboratory testing by [redacted] her husband, on January 27, 2003. The testing results were done by [redacted], a company

that allows "patients to collect their own specimens in the privacy of their own homes" using their "Lab in a Box" kit, which patients then mail directly to their laboratory. *See* http://www.hhla.com/about_our_story.html. The evidence does not show where the laboratory testing samples were drawn.

Counsel also asserts that all of the immigration applications filed by the applicant between 2003 and 2010 reflect her consist statements that she lawfully entered the United States in January 2003. It is noted upon review of the record that the applicant states that she was admitted into the United States in January 2003 in all adjustment of status and waiver application documents submitted *after* the Service sent her a November 26, 2006, request for evidence of her nonimmigrant status when she last entered the United States. All of the adjustment of status and waiver documentation submitted and filed by the applicant *prior to* November 2006, however, state the applicant entered the United States in March 2003. For example, the applicant's Form I-130, Petition for Alien Relative, filed on July 20, 2005; her adjustment of status application, signed under penalty of perjury and filed on October 26, 2005; and her Form I-601 waiver application, filed on October 26, 2005, all state that she arrived in the United States on March 1, 2003. The applicant's Form G-325, Biographic Information signed under penalty of perjury on October 13, 2005 states she arrived in March 2003. The record also contains a sworn statement signed by the applicant on July 5, 2005, stating she entered in March 2003.

The applicant does not explain the inconsistencies in her statements regarding her date of entry, and although the record contains reliable evidence that the applicant was present in the United States from May 2004 through March 2010, the record lacks reliable evidence to establish that she entered or was present in the United States in 2003. Furthermore, even if the evidence had established the applicant's presence in the United States in 2003, the evidence fails to establish that the applicant obtained permission to reapply for admission by filing Form I-212 before entering the country, or that she was lawfully admitted into the United States.

The burden of proof remains with the alien to show by a preponderance of the evidence that she or he is not inadmissible. *See* Section 291 of the Act, 8 U.S.C. §1361. *See also, Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). The applicant has not met her burden of proof in this case. The applicant did not establish that she was subject to the pre-March 17, 2003 Canadian-landed immigrant admission policies, as she was inadmissible under section 212(a)(9)(A) of the Act and required Form I-212 approval in order to apply for admission into the United States. She presents no evidence of such approval. Furthermore, the applicant made numerous inconsistent written statements regarding her date of entry into the United States; she submits no documentary evidence establishing that she was admitted into the United States in either January or March 2003; and there are no Service records of a lawful admission subsequent to the applicant's removal from the United States in February 2000.

Because the record fails to establish that the applicant was lawfully admitted when she reentered the United States after a previous immigration violation, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. No waiver is available for this ground of inadmissibility,

and the applicant must instead obtain permission to reapply for admission into the United States pursuant to 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 permission to reapply for admission unless the alien has been outside the United States for more than ten years since the date of his or her 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. Because the applicant has not remained outside of the United States for ten years since her last departure, in March 2010, she is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, no purpose would be served in adjudicating her Form I-601 waiver application. The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.