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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**



715



DATE: OFFICE: GUATEMALA CITY

FEB 08 2012

IN RE: APPLICANT: 

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

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who resided in the United States from July 1998, when he entered without inspection, until his departure on November 29, 2008. The applicant previously entered the United States without inspection on July 8, 1993, and returned to Guatemala in September 1997. During that initial visit, he was placed in removal proceedings under his correct name, but he also used the name [REDACTED] in an application for asylum and an application for employment authorization. He 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 having attempted to procure a benefit under the Act through fraud or misrepresentation. He was also found to be inadmissible to the United States pursuant to 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 10 years of his last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to join his U.S. Citizen spouse and child in the United States.

The Field Office Director concluded that not only was there insufficient evidence to show the qualifying relative would experience extreme hardship given the applicant's inadmissibility, but that the applicant was also inadmissible under section 212(a)(6)(B) for failure to appear at removal proceedings and section 212(a)(9)(C) for entering without inspection after previous immigration violations, and denied the application accordingly. *See Decision of Field Office Director* dated October 6, 2009. The Field Office Director further noted that the applicant and his spouse married while the applicant was still married to his first wife. *Id.*

On appeal, the applicant's spouse indicates she is aware the applicant does not qualify for the waiver. *Form I-290B, Notice of Appeal or Motion*, November 5, 2009. The spouse further explains she and the applicant are working on getting their marriage annulled, as they were married before the applicant's first marriage ended. *Id.* The spouse additionally contends the effects of separation from the applicant have been detrimental. *Id.*

The record includes, but is not limited to, other applications and petitions filed on behalf of the applicant, statements from the applicant and his spouse, letters from friends and family, evidence of birth, marriage, permanent residence, and citizenship, copies of photographs, medical records, paystubs, U.S. Federal Income Tax Returns, and evidence of removal proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act states:

(B) Failure to Attend Removal Proceedings. – Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's

inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

The applicant admitted under oath that he entered the United States without inspection in July 1993. The applicant was apprehended by immigration officials on July 11, 1993, and was placed in removal proceedings. *Notice to Appear*, July 11, 1993. The applicant failed to appear at a subsequent hearing, and was ordered removed *in absentia*. *Memorandum and Order of Immigration Judge*, October 15, 1993. The applicant admitted he returned to Guatemala in September 1997. As more than five years have elapsed since the applicant's September 1997 return to Guatemala, he is no longer inadmissible pursuant to section 212(a)(6)(B) of the Act for this failure to appear.¹

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 has consented to the alien's reapplying for admission.

....
The record reflects the applicant was ordered removed on October 15, 1993, and subsequently entered the United States without inspection in July 1998. The applicant is therefore inadmissible under section 212(a)(9)(C) of the Act. An alien who is inadmissible under section 212(a)(9)(C) of

¹ It is noted that the applicant, using the name [REDACTED] filed a Form I-589, Application for Asylum in the United States on October 8, 1993. The applicant failed to appear at his asylum interview, and for a subsequent removal hearing. See *Referral Notice*, November 12, 1998, see also *Order of Immigration Judge*, March 17, 1999. However, as the Immigration Judge indicated there was no proof of service of the Form I-862 Notice to Appear and administratively closed the proceedings, the AAO will not find that applicant is inadmissible under section 212(a)(6)(B) of the Act with respect to these removal proceedings.

the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 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 CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on November 29, 2008, and therefore he has not remained outside the United States for 10 years since his last departure. He is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act.

In proceedings for a waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.