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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

PUBLIC COPY

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DATE: Office: SANTA ANA, CA

JAN 06 2012

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 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 Mexico who was found to be inadmissible to the United States pursuant to 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 enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the spouse of a Lawful Permanent Resident (LPR) of the United States. She 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.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated February 10, 2009.

On appeal, counsel asserts that the Field Office Director erred in determining that the applicant did not meet her burden of establishing extreme hardship. *Form I-290B, Notice of Appeal or Motion*, dated February 6, 2009; *see also, counsel's brief*.

The record includes, but is not limited to, a statement and a brief from counsel; declarations by the applicant and her spouse; medical statements relating to the applicant's spouse; a medical statement relating to the applicant; an online information on diabetes; letters of employment from the applicant's spouse's employer; copies of W-2s, Wage and Tax Statements and tax returns; country conditions information on Mexico; and documents relating to the applicant's expedited removal proceedings. The entire record was reviewed and all relevant evidence considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.

....

The record reflects that on December 27, 1997, the applicant attempted to enter the United States by presenting a Form I-551 issued to another individual. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having attempted to procure an immigration benefit through fraud or the willful misrepresentation of a material fact.

Beyond the decision of the Field Office Director, the AAO also finds the applicant inadmissible pursuant to section 212(a)(9)(C) of the Act, which 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

The record reflects that on December 29, 1997, the applicant was removed from the United States pursuant to section 235(b)(1) of the Act. The applicant indicated on her Form I-485, Application to Register Permanent Resident or Adjust Status, that she last entered the United States without inspection on January 27, 1999. Based on the evidence of record, the AAO finds that the applicant entered the United States without inspection after having been ordered removed from the United States under section 235(b)(1) of the Act. She is therefore inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act.¹

The AAO notes that in his denial of the applicant's Form I-601 application, the Field Office Director does not discuss the applicant's inadmissibility under section 212(a)(9)(C)(i) of the Act. However, in his decision to deny the Form I-485 application, the Field Office Director does indicate that the applicant is subject to section 212(a)(9)(C)(i) of the Act for reentering the United States without inspection after having been ordered removed.

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 [REDACTED] applies retroactively, even to those aliens who had Form I-212 applications pending before [REDACTED] was overturned. [REDACTED]

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

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). The record in the present matter does not establish that the applicant has resided outside the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i) of the Act.

As the applicant is not eligible to receive an exception from her section 212(a)(9)(C)(i) inadmissibility, the AAO finds no purpose would be served in considering whether she is eligible for a waiver of inadmissibility under section 212(i) of the Act. The appeal will therefore be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.