

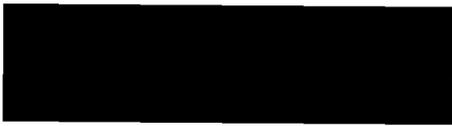
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **JAN 12 2012** OFFICE: LOS ANGELES, CA

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:

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, Los Angeles, California 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 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 willful misrepresentation. The applicant is the wife of a U.S. citizen. She seeks a waiver of her inadmissibility in order to remain 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 her qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated March 16, 2009.

On appeal, the applicant's spouse submits evidence of the hardship he is experiencing as a result of the applicant's inadmissibility. *Form I-290B, Notice of Appeal or Motion*, filed on April 9, 2009. The evidence of record includes, but is not limited to: a statement from the applicant's husband; documentation relating to the medical conditions of the applicant's in-laws; and financial documents. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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.

The record reflects that, on July 23, 1998, the applicant attempted to enter the United States by presenting a Form I-551, Resident Alien Card, in the name of [REDACTED] to immigration inspectors at the San Ysidro Port of Entry. Based on this evidence, the AAO finds the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to obtain admission to the United States through fraud or the willful misrepresentation of a material fact.

Beyond the decision of the Field Officer Director, the AAO also finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, which states 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) 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....

On July 24, 1998, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act for attempting to enter the United States with a Resident Alien Card that did not belong to her and was, thereafter, barred from entering the United States for five years. *Form I-860, Notice and Order of Expedited Removal*, dated July 24, 1998; *Form I-213, Record of Deportable/Inadmissible Alien*, dated July 24, 1998; *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated July 24, 1998. On April 15, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, based on the approved immigrant petition that was filed by her husband. On this form, the applicant indicated that she had last arrived in the United States in July 1998 and that she had entered the United States without inspection. On April 15, 2003, the applicant also filed Supplement A to Form I-485, and on Part 2, Section 4 of the form, she checked the block for “[w]ithout inspection” in response to the statement “I last entered the United States.” Based on this evidence, the AAO finds that the applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed from the United States and subsequently entering the United States without being admitted.<sup>1</sup>

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 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 is currently residing in the United States and has not remained outside the United States for 10 years since her last departure. The

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<sup>1</sup> 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 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3<sup>d</sup> Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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applicant 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.

**ORDER:** The appeal is dismissed.