

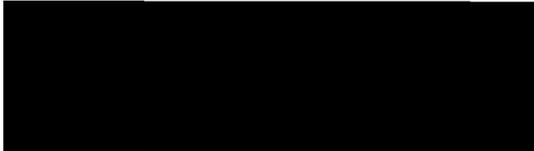
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H5

DATE:

JAN 18 2012

Office: LOS ANGELES, CA

FILE:



IN RE:

Applicant:



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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who presented the I-551 Border Crossing Card of another person in an attempt to enter the United States. The applicant 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). She is the spouse of a U.S. citizen and has three U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant was statutorily ineligible to apply for a waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 21, 2009.

On appeal, counsel for the applicant references *Perez-Gonzalez v. Ashcroft*, 379 F.3d 793 (9<sup>th</sup> Cir. 2006), and asserts that the applicant may concurrently file an I-212 with an I-601 application while residing in the United States. *Form I-290B*, received June 26, 2009. Counsel also asserts that the Field Office Director improperly denied the applicant's Form I-212, and that United States Citizenship and Immigration Services (USCIS) should consider the applicant's waiver application and consider the hardship impacts on the applicant's spouse and children.

The record indicates that the applicant was removed from the United States on February 7, 1999, pursuant to section 235(b)(1). The applicant re-entered the United States within 30 days without inspection, took up residence, married the petitioner and filed a section 245(i) adjustment application.

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 Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

- (1) the alien's having been battered or subjected to extreme cruelty; and
- (2) the alien's--
  - (A) removal;
  - (B) departure from the United States;
  - (C) reentry or reentries into the United States; or
  - (D) attempted reentry into the United States.

The applicant was removed on February 7, 1999, pursuant to section 235(b)(1) and then re-entered the United States within 30 days without inspection. As the applicant was removed pursuant to section 235(b)(1) of the Act and then re-entered the United States without inspection she is inadmissible under section 212(a)(9)(C)(i)(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). 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 *and* that United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

In the present matter, the applicant's last departure was on February 7, 1999. However, the applicant subsequently reentered the United States without inspection and is currently residing in the United States. *See, e.g., Application to Register Permanent Residence or Adjust Status* (Form I-485)(stating that she last arrived in the United States in February 1999 without inspection). Therefore, she has not remained outside the United States for 10 years since her last departure. Accordingly, she is currently statutorily ineligible to be granted 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.