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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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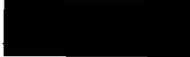


**U.S. Citizenship
and Immigration
Services**



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DATE: **JAN 18 2012** OFFICE: PORTLAND, OR

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,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director (Acting FOD), Portland, Oregon 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 lawful permanent resident. She seeks a waiver of her inadmissibility in order to reside in the United States.

On appeal, the applicant's former counsel contends that the Acting FOD erred in finding the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act and, alternately, that the applicant has established extreme hardship to her qualifying relative(s).

The evidence of record includes, but is not limited to: a brief from the applicant's former counsel; a statement from the applicant's husband; documentation relating to the medical condition of the adopted daughter; financial documents; letters of support for the applicant; and information on country conditions in Mexico. 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 November 29, 1999, 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 Luis Port of Entry. The applicant's former counsel asserts that the applicant timely retracted her misrepresentation at the first available opportunity and therefore, that the Acting FOD erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel asserts that the applicant was not given any opportunity to retract her statement during her primary inspection and that the immigration officer had not exposed her false testimony prior to questioning her during her secondary inspection, during which the applicant retracted her misrepresentation.

Former counsel cites *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949), as support for the contention that where an individual timely and voluntarily recants his false statement, he has not engaged in false testimony. The Board of Immigration Appeals (BIA) in that case was making a determination of whether the alien in question had committed an unlawful act of perjury, where an essential element of the offense was that "the offense must be otherwise complete," for purposes of INA § 101(f)(6), 8 U.S.C. § 1101(f)(6), which provides that an individual who has

given false testimony cannot be found to be a person of good moral character. The BIA found that the alien's perjury was not complete in *Matter of R-R-* because he had timely and voluntarily retracted his false statement before the immigration official became aware through other means of the falsity of his statement.

The AAO further notes that in *Matter of M*, 9 I&N Dec. 118 (BIA 1960), also referenced by counsel, the BIA held that a respondent who had asserted and then voluntarily retracted his claim to lawful permanent residency during the same interview could establish the good moral character necessary for a grant of voluntary departure. The BIA has also found respondents to have "timely retracted" misrepresentations in cases where they used fraudulent documents only *en route* to the United States and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. See, e.g., *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); cf. *Matter of Shirdel*, 18 I&N Dec. 33 (BIA 1984). The AAO also notes that the Department of State follows similar reasoning in determining whether a misrepresentation on the part of an overseas visa applicant should result in a finding of inadmissibility under 212(a)(6)(C)(i) of the Act:

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.

Foreign Affairs Manual (FAM), Title 9, Section 40.63, Note 4.6.

Counsel did not dispute that the applicant did in fact present the fraudulent Resident Alien Card to U.S. officials in order to procure admission to the United States. It was after this material misrepresentation that she was sent for further inspection, where she admitted her true identity. Based on our review of the record, the AAO finds it to contain sufficient evidence to establish that the applicant's admission that the permanent resident card, which she presented at the San Luis Port of Entry, did not belong to her was not a timely retraction of her misrepresentation. Therefore, 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.

The AAO also notes that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act. Although not addressed by the Acting FOD in her denial of the Form I-601 dated July 20, 2009, the Acting FOD's section 212(a)(9)(C) finding is included in her Form I-212 decision of the same date.

Section 212(a)(9)(C)(i)(II) of the Act 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....

Following her attempt to enter the United States with a Resident Alien Card that did not belong to her, on November 29, 1999, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act and was, thereafter, barred from entering the United States for five years. *Form I-860, Notice and Order of Expedited Removal*, dated November 29, 1999; *Form I-213, Record of Deportable/Inadmissible Alien*, dated November 29, 1999; *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated November 29, 1999. On November 25, 2007, the applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, based on the approved immigrant petition that was filed on her behalf by her husband. The applicant indicated on the Form I-485 that her last arrival to the United States was on or about March 20, 2000 and that she had entered the United States without inspection. The record, however, establishes that the applicant had also entered the United States without inspection on May 3, 2000 and she was allowed to voluntarily return to Mexico. On November 25, 2007, the applicant also filed Supplement A to Form I-485, and on Part B, item 2 of the form, she checked the block for "I'm in unlawful immigration status because I entered the United States without inspection..." in response to the statement "[a]nd I fall into one or more of these categories...". Based on this evidence, the AAO finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed from the United States and subsequently reentering the United States without being admitted.

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 10 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 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.