

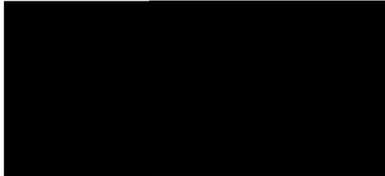
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: **JAN 18 2012**

Office: LOS ANGELES, CA

FILE: 

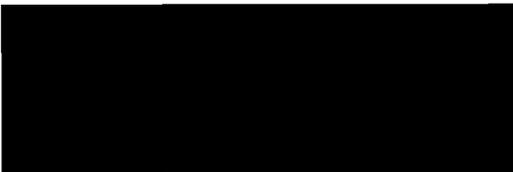
IN RE:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 used false documents 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 wife of a U.S. citizen. 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 had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband and children, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 10, 2009.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible due to misrepresentation, and that the applicant's spouse is experiencing extreme emotional, physical and financial hardship due to the applicant's inadmissibility. *Brief in Support of Appeal*, received July 7, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

Counsel asserts that the applicant is not the woman referred to by United States Citizenship and Immigration Services (USCIS), that she did not possess any fraudulent document when she attempted to enter the United States on May 24, 1998, and that the interviewing officer confused her for someone who was misrepresenting her identity. *Brief in Support of Appeal*, received July 7, 2009. The applicant's spouse has also asserted that she entered the United States in June 1998 without inspection. *Statement of the Applicant*, received on July 7, 2009.

The record contains a sworn statement by the applicant stating that she had purchased the fraudulent document she attempted to enter the United States with in Tijuana for \$70. *Form I-867B, Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated May 24, 1998. The interview that was conducted at the time was done in Spanish and witnessed by two officers. In light of this evidence, the AAO does not find counsel's assertion that the interviewing immigration officer confused her with someone else to be persuasive. Based on the evidence contained in the record the AAO finds the applicant to be inadmissible pursuant to 212(a)(6)(C)(i).

The record indicates that the applicant entered the United States without inspection in 1994 and departed the United States in or about May 1998, then returned to the United States in June of 1998. The applicant attempted to re-enter the United States on May 28, 1998, but was detained, found inadmissible for misrepresentation and expeditiously removed. *Form I-831, Record of Deportable/Inadmissible Alien*, dated May 28, 1998. The Field Office Director concluded that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) and adjudicated the applicant's waiver to determine if it met the extreme hardship standard.

The applicant entered the United States without inspection in 1994. The applicant began accruing unlawful presence from April 1, 1997, the effective date of the unlawful presence provision of the act, until she departed the United States in May of 1998, a period of over one year. The applicant attempted to re-enter the United States using the Border Crossing Card of another person on May 24, 1998, and was expeditiously removed pursuant to section 235(b)(1). Removal under this section bars an alien from re-entry into the United States for a period of five years pursuant to section 212(a)(9)(A) of the Act. The applicant then re-entered the United States less than one month later in June 1998 without inspection.

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 departed the United States in May 1998, after having accrued more than one year of unlawful presence, and re-entered without inspection in June 1998, and is therefore inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The applicant was removed from the United States under section 235(b)(1) on May 28, 1998, and re-entered without inspection in June 1998, less than one month later, and is therefore inadmissible pursuant to 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 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* USCIS has consented to the applicant's reapplying for admission. The applicant is currently residing in the United States and therefore, has not remained outside the United States for 10 years since her last departure. She is currently statutorily ineligible to apply for permission to reapply for admission. *See In Re Briones*, 24 I&N Dec. 355 (BIA 2007). As such, no purpose would be served in adjudicating her waiver application.

ORDER: The appeal is dismissed.