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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

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DATE: JAN 18 2012

Office: HARLINGEN, TX

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)

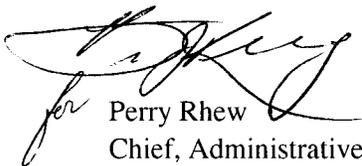
ON BEHALF OF APPLICANT:  


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,

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Harlingen, Texas. 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 United States citizen. 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 Acting Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Acting Field Office Director*, dated June 29, 2009.

On appeal, counsel asserts that the director failed to adequately consider the evidence of hardship in the record, and further failed to consider this evidence in the aggregate. *Form I-290B, Notice of Appeal or Motion*, dated July 29, 2009. Counsel indicates that a brief and/or additional evidence will be filed within 30 days, but no brief or additional evidence is found in the record. The record will be considered complete and the decision will be made based on the evidence in the record.

The record includes, but is not limited to, a statement from the applicant's spouse; a psychological evaluation of the applicant's spouse; a copy of a loan repayment notice; a copy of a delinquent tax payment; a tax return for the applicant's spouse for 2007; and documentation relating to the applicant's prior immigration history. 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 January 31, 1997, the applicant attempted to enter the United States by presenting a Border Crossing Card issued to another person at the Hidalgo, Texas, Port-of-Entry. On February 3, 1997, the applicant pled guilty to the offense of knowingly and willfully attempting to enter the United States by false or misleading misrepresentation or the willful concealment of a material fact, in violation of 8 U.S.C. 1325(a)(3). A United States Magistrate Judge, Southern District of Texas, sentenced the applicant to 90 days in prison and a special assessment of \$10.00. The sentence was suspended and the applicant was placed on probation without supervision for a period of three (3) years. In that the record establishes that the applicant attempted to enter the United States through fraud or the willful misrepresentation of a material fact, the AAO finds that she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Beyond the decision of the Field Office Director, the AAO also finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.<sup>1</sup>

Section 212(a)(9)(C) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission. . . .

The record reflects that on February 7, 1997, an immigration judge ordered the applicant removed from the United States. On her Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant indicates that she last entered the United States without inspection in 1997. Accordingly, the AAO finds that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act as she entered the United States without inspection after having been ordered removed.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, an applicant must remain outside the United States for at least ten years following his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). 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)(iii) of the Act.

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

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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 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).



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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 will be dismissed.