

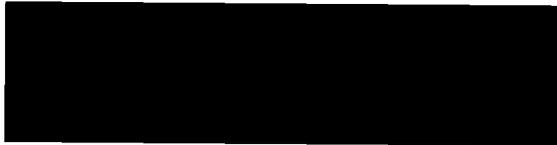
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



H5

Date: **JAN 19 2012**

Office: LOS ANGELES

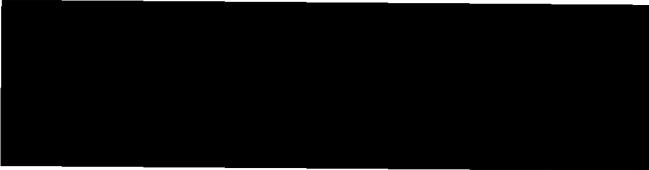
FILE: 

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 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. The matter 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring an immigration benefit to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her Lawful Permanent Resident spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *See Decision of the Field Office Director*, dated March 2, 2009.

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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between -

(I) the alien's having been battered or subjected to extreme cruelty;
and

(II) the alien's removal, departure from the United States, reentry or
reentries into the United States; or attempted reentry into the United
States.

The applicant was removed from the United States on April 10, 1997 pursuant to section 235(b)(1) of the Act after attempting to enter the United States by presenting a Mexican passport which contained a counterfeit I-551(T) entry stamp. After her removal, the applicant reentered the United States without inspection on an unknown date in April 1997.¹ The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

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). 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. In the present matter, the applicant is currently residing in the United States and did not remain outside the United States for 10 years after her last departure in April 1997. She is therefore currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating the applicant's waiver under section 212(i) of the Act.²

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

ORDER: The appeal is dismissed.

¹ According to the Form I-485, Application to Request Permanent Residence or Adjust Status, filed by the applicant on December 12, 2005, the applicant states that her date of last arrival in the United States was in April 1997 and she entered without inspection. In the applicant's declaration of October 9, 2006, she states that subsequent to her removal from the United States on April 10, 1997, she "snuck into the United States through the hills."

² The record includes a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, which the applicant submitted on October 23, 2006. This application is still pending. However, the applicant remains statutorily ineligible for permission to reapply for admission to the United States under section 212(a)(9)(C) of the Act.