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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

[Redacted]

HS

DATE: **MAY 01 2012** Office: LAS VEGAS, NV

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[Redacted]

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, Las Vegas, Nevada. 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 entered the United States without admission after having previously accrued more than one year unlawful presence. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that she was eligible to receive a waiver for section 212(a)(9)(C)(ii), noting that she had not received permission to reapply for admission from the Attorney General, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 29, 2010.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was in error, and that the record establishes that the denial of the waiver application will result in extreme hardship for her U.S. citizen spouse. *Form I-290B*, received February 24, 2010. Although counsel indicated further evidence and a brief would be forthcoming, no such evidence or brief is found in the record. The record shall be considered complete.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant entered the United States without inspection prior to April 1, 1997, the effective date of the unlawful presence provision, and remained until 2002, when she was detained and returned to Mexico. The applicant stated during an adjustment interview that she returned to the United States two weeks later on June 1, 2002, without admission and has resided in the United States since that time. The applicant accrued unlawful presence from April 1, 1997, until her 2002 departure from the United States.

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.

As the applicant re-entered the United States without admission in 2002 after having accrued more than one year of unlawful presence, and currently resides in Nevada as of the date of this proceeding, she is inadmissible pursuant to section 212(a)(9)(C)(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, the applicant has remained outside the United States *and* United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

In the present matter, the record does not establish that the applicant has resided outside the United States for the required ten years. Therefore, she is statutorily ineligible to apply for permission to reapply for admission. *See In Re Briones*, 24 I&N Dec. 355 (BIA 2007); *see also Memorandum, Adjudicating Forms I-212 for Aliens inadmissible under section 212(a)(9)(c) or Subject to Reinstatement Under Section 240(a)(5) of the Immigration and Nationality Act in light of Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), Michael Aytes, Acting Deputy Director, May 19, 2009. As such, no purpose would be served in adjudicating her waiver application under section 212(a)(9)(B)(v) of the Act.

As the applicant is statutorily ineligible to file a waiver application, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.