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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: **MAY 21 2012** Office: GUATEMALA CITY, GUATEMALA FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and 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,  
  
Perry Rhee  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Guatemala City, Guatemala. 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 Guatemala. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting her identity when attempting to enter the United States; section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed and seeking admission within five years of her removal; and section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for reentering the United States without being admitted after having been ordered removed. She seeks waivers of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i); as well as exceptions under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), and section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii).

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 spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 9, 2009. Based on her denial of the Form I-601, the Field Office Director denied the Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) as a matter of discretion. *Decision of the Field Office Director*, dated November 9, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was arbitrary and failed to take into account the extreme hardship that would be suffered by the applicant's spouse. *Attachment, Form I-290B*.

The record reflects that the applicant attempted to enter the United States on May 9, 1998 by presenting a Resident Alien Card (Form I-551) belonging to another individual. On the same day, she was placed into proceedings under section 235(b)(1) of the Act and expeditiously removed from the United States. At her January 2, 2009 immigrant visa interview, the applicant testified that she returned to the United States in 1998, entering without inspection, and that she remained in the United States until 2008.

Section 212(a)(6)(C) of the Act 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.

In that the record indicates that the applicant attempted to enter the United States on May 9, 1998, by presenting a Form I-551 belonging to another individual, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having sought admission through fraud or the willful misrepresentation of a material fact.

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 applicant entered the United States without inspection in 1998 and did not depart until 2008. Therefore, she accrued unlawful presence from the date of her 1998 entry until the date of her 2008 departure. As the applicant accrued unlawful presence in excess of one year and is seeking admission within ten years of her 2008 departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed

(i) **Arriving aliens.** - Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

.....

(iii) **Exception.** - Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record establishes that on May 9, 1998, the applicant was ordered removed under section 235(b)(1) of the Act, barring her admission to the United States for five years. The applicant, however, returned to the United States without waiting for the five years to elapse and without obtaining an exception under section 212(a)(9)(A)(iii) of the Act. Accordingly, she remains inadmissible pursuant to section 212(a)(9)(A)(i) of the Act.

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 1225(b)(1) of this title, section 1229a of this title, 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 battering or subjection 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 record indicates that the applicant testified during her immigrant visa interview on January 2, 2009 that following her May 9, 1998 removal, she returned to the United States in 1998, entering without inspection, and did not depart until 2008. As the applicant entered the United States without being admitted after having been ordered removed, she is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

The AAO notes that an alien who is inadmissible under section 212(a)(9)(C) of the Act is not eligible to apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of his or her 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 applicant has testified that her last departure from the United States occurred in 2008.

As the applicant has not remained outside the United States for ten years, she is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, the AAO finds no purpose would be served in considering her waiver application under sections 212(a)(9)(B)(v) and 212(i) of the Act. Based on this same ineligibility, the AAO also concludes that the Form I-212 is appropriately denied as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). Accordingly, 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.