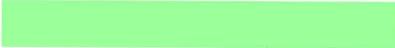




U.S. Citizenship  
and Immigration  
Services

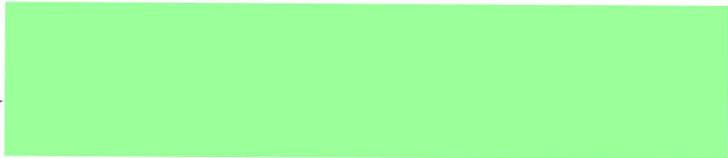
(b)(6)



Date: Office: LOS ANGELES, CALIFORNIA FILE:   
IN RE: **APR 08 2013** 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion will be dismissed and the underlying application remains denied.

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 having attempted to enter the United States through fraud or the willful misrepresentation of a material fact; and section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for being removed from the United States and subsequently entering the United States without inspection. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), and on July 17, 2009, the Field Office Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative. On August 17, 2009, the applicant appealed the Field Office Director's decision with the AAO. On April 11, 2012, the AAO dismissed the applicant's appeal. On May 10, 2012, the applicant filed a motion to reopen and reconsider the AAO's decision.

In its April 11, 2012 decision, the AAO found that because the applicant was statutorily ineligible for relief based on his inadmissibility under section 212(a)(9)(C)(i)(II), no purpose would be served in considering whether he was eligible for a waiver of inadmissibility under section 212(i) of the Act. On motion, the applicant, through counsel, requests that a decision on the applicant's waiver application "be held in abeyance" until the Ninth Circuit Court of Appeals (Ninth Circuit) rehears *Garfias-Rodriguez v. Holder*, because a favorable decision in *Garfias-Rodriguez* would directly impact the applicant.

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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, based on current law, 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 has consented to the applicant's reapplying for admission.

As noted by counsel, the applicant resides in the jurisdiction of the Ninth Circuit. In *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), the Ninth Circuit overturned its previous decision, *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), and deferred to the Board of Immigration Appeals' (Board) holding that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-year bar. The Ninth Circuit clarified that its holding in *Duran Gonzalez* applies retroactively, even to those aliens who had Form I-212 applications pending before *Perez Gonzalez* was overturned. *Morales-Izquierdo v. DHS*, 600 F.3d. 1076 (9th Cir. 2010); see also *Duran Gonzalez v. DHS*, 659 F.3d 930 (9<sup>th</sup> Cir. 2011) (affirming the district court's order denying the plaintiff's motions to amend its class certification and declining to apply *Duran Gonzalez* prospectively only).

In *Garfias-Rodriguez v. Holder*, 649 F.3d 942 (9<sup>th</sup> Cir. 2011), the Ninth Circuit further held that the BIA ruling in *Matter of Briones* that aliens inadmissible due to illegal reentry after accruing more than one year of unlawful presence could not apply for adjustment of status applied retroactively. On June 27, 2011, the petitioner in *Garfias-Rodriguez* filed a petition for panel rehearing and petition for rehearing en banc from the April 11, 2011 decision.

The applicant submitted the Form I-290B, Notice of Appeal or Motion, on May 10, 2012. On motion counsel contends that, as the applicant's case arose in the Ninth Circuit, it is imperative to consider the on-going litigation in *Garfias-Rodriguez v. Holder*, as it would have a direct impact on the applicant's case. On March 1, 2012, the Ninth Circuit Court of Appeals ordered that the case be reheard en banc. *Garfias-Rodriguez v. Holder*, 672 F.3d 1125 (9<sup>th</sup> Cir. 2012). On October 19, 2012, the court issued its en banc decision in the matter. In this decision, the Ninth Circuit held that it must defer to the Board's decision in *Matter of Briones* and that the Board's decision may be applied retroactively to the petitioner. *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9<sup>th</sup> Cir. 2012)

The litigation on this issue has been resolved by the Ninth Circuit, which has deferred to the Board's holding that aliens who are inadmissible under section 212(a)(9)(C)(i)(I) of the Act may not seek adjustment of status under section 245(i) of the Act. The Court has further held that this ruling may be applied retroactively.

The record establishes that the applicant was removed from the United States on January 13, 1998, reentered without inspection in November 2000, and he has not remained outside the United States for 10 years since his last departure. He is thus currently statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

Moreover, according to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has not stated reasons for reconsideration that are supported by precedent decisions, the motion to reopen and reconsider will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the AAO's dismissal of the appeal is upheld and the underlying waiver application is denied.

**ORDER:** The motion is dismissed and the previous decisions of the Field Office Director and the AAO are affirmed. The application is denied.