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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

DATE: APR 09 2013

Office: SAN BERNARDINO

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 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,

*[Signature]*  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Bernardino, California, and 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation, and under 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 illegally after having been ordered removed.

The applicant subsequently filed Form I-601, Application for Waiver of Grounds of Inadmissibility, and Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied his Form I-601 accordingly. *See Decision of Field Office Director*, dated September 12, 2012. In a separate decision the Field Office Director found the applicant had not met the requirements for consent to reapply under section 212(a)(9)(C)(ii) of the Act. Therefore, the Field Office Director denied the applicant's Form I-212. *See Decision of Field Office Director*, dated September 12, 2012.

On appeal, the applicant contests the finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Counsel for the applicant asserts that the fact that the applicant was detained at the border is insufficient to establish that he was removed. Additionally, counsel alleges that there is no evidence that the applicant was informed of his rights when he was placed in expedited removal proceedings under section 235(b) of the Act. Finally, counsel contends that the applicant's U.S. citizen spouse and lawful permanent resident parents would suffer extreme hardship if the waiver application were denied.

The record contains, but is not limited to: statements from the applicant and his qualifying spouse; a letter from the applicant's mother-in-law; medical and education records regarding the applicant's children; letters of support from friends; financial records; and employment records. The record also contains a letter from the applicant's mother, but the English translation of that letter is not accompanied by a certificate of translation as required by 8 C.F.R. § 103.2(b)(3). With the exception of the applicant's mother's letter, the entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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 record establishes that the applicant entered the United States without inspection in 1991 and remained in the country until returning to Mexico for a visit in June 1999. On June 14, 1999, he applied for admission into the United States by presenting a Form I-551, Resident Alien Card, belonging to another person. During secondary inspection, the applicant admitted that the Form I-551 did not belong to him and that he had purchased it for \$50. The applicant was subsequently removed from the United States on June 14, 1999 pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). Later that same month, he reentered the United States without inspection. He has remained in the United States since that date. The applicant is therefore inadmissible under section 212(a)(9)(C)(i)(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 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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 10 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 ten years since his last departure in June 1999. He is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether he has established extreme hardship to his qualifying relatives or whether he merits a waiver under section 212(i) of the Act as a matter of discretion. In proceedings for an application for a waiver of grounds of inadmissibility, the burden of proving

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eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.