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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 22 2013 Office: ORLANDO, FL

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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long, sweeping underline.

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Orlando, Florida. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). She is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to 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 the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) January 7, 2009. The AAO found that the applicant was inadmissible under section 212(a)(9)(C) of the Act for having re-entered the United States without inspection within five years of having been removed, and that she was currently ineligible to apply for permission to reapply for admission because she had not remained outside the United States for a period of 10 years from the date of her most recent departure.

On motion, counsel for the applicant asserts that the applicant must demonstrate that she was outside the U.S. for a period of 10 years from December 1999, citing to *Matter of Tores-Garcia*, 23 I&N Dec. 866. Counsel further states that the applicant asserts that since it has been 10 years since December 1999 her waiver should be granted and she should be allowed to reapply for entry into the United States. *Form I-290B*, received September 19, 2012.

A motion to reconsider must: (1) 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 USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel asserts that the decision of the AAO was based on an erroneous application of law and he cites to supporting legal authority. The motion to reconsider will be granted and the matter will be reexamined.

Counsel for the applicant asserts that the applicant must demonstrate that she was outside the United States for a period of 10 years from her December 1999 removal, and cites to *Matter of Torres-Garcia*. Counsel's assertion is factually incorrect; as the applicant's most recent departure was March 29, 2007. In *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), the Ninth Circuit specifically deferred to the BIA's 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 10-year bar and must remain outside the United States. Counsel's assertion, while legally viable, is not factually correct, and does not illustrate that the AAO's decision was inconsistent with established precedent or established USCIS policy.

The applicant's most recent departure was on March 29, 2007. The applicant must remain outside the United States for a period of 10 years from that date before becoming eligible to apply for permission to reapply for admission to the United States.

Although counsel states that the applicant feels her 10 year bar has expired, this is not supported by pertinent precedent decisions, and the decisions cited by counsel do not demonstrate that the AAO misapplied the law or incorrectly applied USCIS policy.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the application remains denied.