

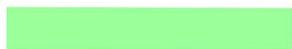


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JAN 07 2013 Office: EL PASO, TEXAS

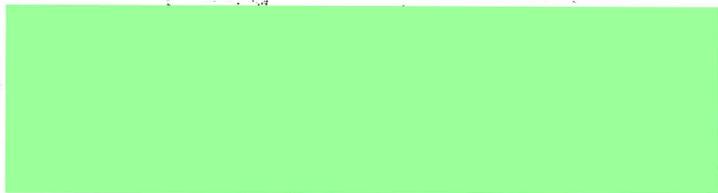


IN RE: Applicant:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

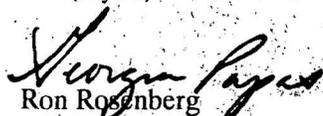


INSTRUCTIONS:

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

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DISCUSSION: The waiver application was denied by the Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the mother of two U.S. citizen children and one lawful permanent resident child. She is the beneficiary of an approved Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her children.

The Field Office Director found that the applicant was subject to the inadmissibility provisions of section 212(a)(9)(C) of the Act and ineligible for the exception under section 212(a)(9)(C)(iii), and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 10, 2011. The AAO notes that the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) on the same day, though no Notice of Appeal or Motion (Form I-290B) was filed for that application.

On appeal, the applicant, through counsel, asserts that the applicant established that "each deportation was directly related to the domestic violence that she experienced at the hands" of her children's father. *Form I-290B*, filed September 12, 2011. Moreover, counsel claims that the applicant's children would experience hardship if she is removed from the United States. *Id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's briefs, statements from the applicant and her children, letters of support, mental-health documents for the applicant, welfare documents, custody and child support documents, household and utility bills, employment documents for the applicant, financial documents, photographs, country-conditions documents about Mexico, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at 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,

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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 admitted from a foreign contiguous territory, the Secretary of Homeland Security ["Secretary"] has consented to the alien's reapplying for admission.
- (iii) Waiver — The [Secretary] 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.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, consent to reapply under section 212(a)(9)(C)(ii) of the Act can only be granted to one who has left the United States, is currently abroad, and is seeking admission to the United States at least ten years after the date of his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record does not reflect that the applicant in the present matter has met these requirements.

However, because the applicant is a VAWA self-petitioner, she is eligible to seek a waiver of inadmissibility under 212(a)(9)(C)(iii) of the Act. As stated above, in order to qualify for such a waiver, there must be a connection between the applicant's battering or subjection to extreme cruelty and her departure, attempted reentry, removal or reentry into the United States. As noted in the Field Office Director's decision, counsel claims that the applicant was "forced to reenter the United States by manipulation, and threats of [her] children" being taken away by their father. Additionally, counsel claims that the applicant's husband would not allow her to stay in Mexico. However, the Field Office Director claims that reports created during the applicant's apprehensions contradict counsel's claims.

The record establishes that on September 11, 1998, the applicant claimed that she was entering the United States to shop, and in November 2000, she claimed she was visiting family members. The applicant made no claim that she was entering the United States because of the battering or extreme cruelty by her children's father.

In support of her Form I-360, the applicant provided numerous letters of support describing the abuse she suffered from her children's father. In her statement dated November 4, 2004, the applicant claims that

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her children's father arranged for their first child to be born in the United States. On or about January 17, 1996, the applicant entered the United States legally to give birth to their son and returned to Mexico after leaving the hospital. When she attempted to reenter the United States in April 1997, her visa was taken away because of outstanding medical bills from her son's birth. In January 1998, when the applicant became pregnant again, her children's father told her that he wanted her to give birth in the United States. He threatened to take their son to the United States and leave her and the new baby in Mexico if she did not do as he said. On September 11, 1998, she took her sister's border crossing card and attempted to enter the United States. When she was apprehended, she was expeditiously removed to Mexico. She claims that she was afraid to tell the truth to the officers that her son's father was abusing her. In December 1998, the applicant's children's father told the applicant that he was taking their children to the United States. He legally entered with their son, and she "crossed through the river" with their infant daughter. In October 2000, the applicant returned to Mexico with her two children who were sick, after their father refused to take them to the doctor in the United States. In November 2000, the applicant was apprehended attempting to enter the United States without inspection, after her children's father promised her that he would change. She was returned to Mexico and the next day, her children's father arranged for her to cross into the United States again. She was not apprehended and has been in the United States since that time.

The AAO finds that based on the applicant's statement, her attempted entry on September 11, 1998, her entry without inspection in December 1998, and her departure from the United States in October 2000, are related to the abuse she was subjected to by her children's father. However, the applicant has not established a connection between her abuse and her entry without inspection in November 2000. The AAO finds that the record does not establish that the applicant entered the United States in November 2000 because of the battery or extreme cruelty she was subjected to by her children's father.

The burden of proving admissibility rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant is statutorily ineligible to seek an exception from or waiver of her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, and the AAO finds no purpose would be served in considering the merits of her Form I-601 waiver application under section 212(i) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.