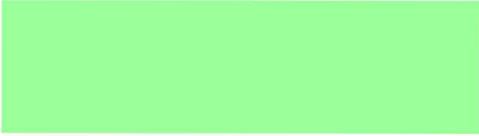


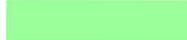


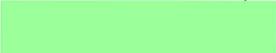
(b)(6)



Date: **JAN 16 2013**

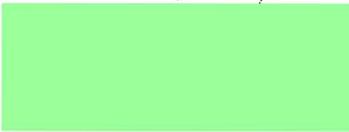
Office: PORTLAND, OR

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the 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, Portland, Oregon. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

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)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year; section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit; and section 212(a)(9)(C) of the Act as an alien unlawfully present in the United States after a previous immigration violation. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant is inadmissible under section 212(a)(9)(C) of the Act for which no waiver is available. The field office director further found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. The AAO dismissed the applicant's appeal, also finding that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and, therefore, statutorily ineligible for a waiver. The AAO dismissed the appeal accordingly.

Counsel filed a motion to reconsider contending that the AAO's decision incorrectly states that the applicant unlawfully entered the United States and was unlawfully present for more than a year. Counsel submits a copy of the applicant's visa showing she lawfully entered the United States on August 29, 2002, and the applicant submits a new declaration in support of the motion.

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. A motion to reconsider a decision on an application or petition must, when filed, also 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the applicant's submission meets the requirements of a motion to reconsider. Accordingly, the motion is granted.

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 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.

In this case, the applicant states that she had two different adjustment interviews. The applicant contends that during the first interview, her daughter interpreted for her and may have done so in a way that caused the applicant to inadvertently give incorrect information about whether she applied for visas in Guadalajara in 2000. The applicant states that during her second interview, she was represented by an attorney and although she may have initially given incorrect information, she "readily admitted" that she applied for visas in Guadalajara, although did not remember the time and place of her applications. The applicant further states that although she was in the United States between November 2000 and April 2001, the only time she entered the United States after April 2001 was when she reentered the United States legally, with inspection, using a visa in August 2002.

After a careful review of the entire record, including the new evidence submitted with the motion, the AAO stands by its previous finding that the applicant is inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act. The applicant concedes that she entered the United States without inspection in August 1993. *Record of Sworn Statement*, dated January 8, 2008; *Letter from* [redacted] dated February 4, 2008. Copies of birth certificates in the record show that she gave birth to her two U.S. citizen children in May 1994 and April 1998. The applicant's new declaration submitted with the motion concedes that she she applied for nonimmigrant visas in 2000

in Guadalajara, Mexico. The applicant accrued unlawful presence in the United States beginning on April 1, 1997, the date of enactment of unlawful presence provisions under the Act. The fact that she gave birth to her daughter, [REDACTED], on April 29, 1998, shows she was unlawfully present in the United States for more than one year, from April 1, 1997, through at least April 29, 1998. In fact, the applicant may have accrued one, two, or three years of unlawful presence as it is unclear precisely when the applicant departed the United States prior to her visa applications in Guadalajara in 2000. As stated in the AAO's previous decision, the burden of proving eligibility for entry or admission to the United States is on the applicant who must resolve any inconsistencies in the record by independent objective evidence. See Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not provided any independent, objective evidence showing she was not unlawfully present in the United States for more than one year, beginning on April 1, 1997.

Moreover, after having been unlawfully present in the United States for more than one year, the applicant reentered the United States sometime between November 2000, when her second visa application was denied in Guadalajara, and April 2001, when she departed the United States as a result of her father's death. Therefore, the critical time period the applicant must establish she lawfully entered the United States is between November 2000 and April 2001. The applicant has not submitted any evidence to show she lawfully entered the United States between November 2000 and April 2001. The fact that the applicant subsequently entered the United States in August 2002 using a valid V-1 visa is irrelevant. A subsequent valid entry into the United States does not erase any previous illegal entry into the United States. The AAO notes that in our previous decision, we specifically stated that "the applicant reentered the United States in August 2002 using a V-1 visa and is currently residing in the United States." Therefore, the applicant's declaration submitted with the motion and the copy of her 2002 visa does not provide any new information and does not change the AAO's finding that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) 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. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Gonzales v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). 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 the United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

Here, the applicant reentered the United States in August 2002 and continues to reside in the United States. Therefore, she has not remained outside the United States for ten years since her last departure. Accordingly, she is currently statutorily ineligible to apply for permission to reapply for admission and the appeal must be dismissed.

ORDER: The motion is granted and the underlying application remains denied.