



U.S. Citizenship  
and Immigration  
Services

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DATE: **JAN 25 2013** Office: ACCRA, GHANA

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and 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

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ivory Coast. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure, and for having entered the United States using another person's passport. The Field Office Director also found the applicant inadmissible pursuant to section 212(a)(9)(C)(i) as an alien who re-entered the United States without admission after having previously accrued a year or more of unlawful presence. She is married to a United States citizen and seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 212(i) of the Act, 8 U.S.C. § 1182.

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 spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 5, 2011.

On appeal, counsel for the applicant states that the Field Office Director's decision was incorrect as a matter of law, and that both of the applicant's entries into the United States constitute admissions. *Form I-290B*, received on September 26, 2011.

The record includes, but is not limited to, statements by counsel; copies of birth certificates for the applicant and her children; statements from the applicant's spouse and son; a statement from the applicant's church; medical records pertaining to the applicant's spouse; background articles on lead poisoning; medical records for the applicant's son; country conditions materials for the Ivory Coast; and photographs of the applicant, her spouse and family. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible. . . .

The record indicates that the applicant entered the United States with a B-2 visa on September 18, 1994, and remained beyond her authorized period of stay. The applicant did not depart the United States until January 9, 2000, triggering the unlawful presence provision of the Act. The applicant subsequently re-entered the United States in 2001 and has remained since that time. As such, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provision of the Act, until January 9, 2000, a period of over one year. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within 10 years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record indicates that the applicant entered the United States in 1994 on a B-2 visa and overstayed her authorized period of stay. The applicant subsequently departed the United States on January 9, 2000. She re-entered the United States at an unknown date and unknown time in 2001, and has remained in the United States since that time. The applicant asserted that she re-entered the United States using another person's passport, and on that basis the Field Office Director found her additionally inadmissible pursuant to section 212(a)(6)(C) of the Act for misrepresentation. The applicant does not contest this finding on appeal, but as discussed below, the record does not support that the applicant re-entered the United States using another person's passport.

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

(b)(6)

(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.

In order for an alien to be considered inadmissible under section 212(a)(9)(C)(i)(I) of the Act, she must have accrued over one year of unlawful presence and re-entered the United States without being admitted. If an applicant has sought admission to the United States by seeking to enter at a point or place designated to receive entrants and presented herself to an inspection officer, she is considered to have been admitted, even if it is subsequently revealed that her entry was not lawful due to the use of fraudulent or false documentation. In this case, that is what counsel has asserted, that the applicant presented a false passport to re-enter the United States in 2001, and thus she is not inadmissible pursuant to this section because her entry constituted an admission.

The record does not contain any evidence to corroborate the applicant's assertion. There is no copy of the passport used, and no information has been provided which might allow United States Citizenship and Immigration Services (USCIS) to verify her claims. USCIS conducted a records check in an attempt to verify the applicant's assertions and concluded that none of the agency's records contained any evidence that the applicant re-entered the United States at a designated point of entry after being admitted by an immigration officer. It is noted that the applicant made this same assertion during removal proceedings in 2005 and the presiding Immigration Judge found that her assertion was not credible and that she had entered the United States without inspection sometime after January 2000.

Based on the fact that the applicant has not submitted any evidence to corroborate her assertions, and has not provided any other information to help establish her claims, the AAO does not find her assertion to be established by the record. Without any evidence to support her assertion, the AAO must conclude that the applicant re-entered the United States without inspection. As a result of this determination, the AAO does not find any basis to conclude that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresentation.

As the applicant re-entered the United States without inspection after having accrued over one year of unlawful presence, she is inadmissible pursuant to section 212(a)(9)(C) 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). 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 CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant has not remained outside the United States for at least 10 years since her entry that rendered her inadmissible under section 212(a)(9)(C) of the Act. She is currently inadmissible,

(b)(6)

Page 5

and is statutorily ineligible to apply for permission to reapply for admission. *See In Re Briones*, 24 I&N Dec. 355 (BIA 2007); *see also Memorandum, Adjudicating Forms I-212 for Aliens inadmissible under section 212(a)(9)(c) or Subject to Reinstatement Under Section 240(a)(5) of the Immigration and Nationality Act in light of Gonzalez v. DHS*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007), Michael Aytes, Acting Deputy Director, May 19, 2009. As such, no purpose would be served in determining whether she meets the requirements for a waiver under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.