

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JUN 12 2013** Office: GUATEMALA CITY, GUATEMALA

FILE: A [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City, Guatemala. 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 Guatemala. The record indicates that the applicant entered the United States on October 12, 1997 with a non-immigrant tourist visa and departed in April 1999. The applicant subsequently attempted to re-enter the United States on April 16, 1999, with a fraudulent stamp in his passport in an attempt to conceal the fact that he had overstayed his previous period of authorized stay. The applicant was ordered expeditiously removed the same day. The applicant subsequently re-entered the United States without inspection on an unspecified date in or after March 2000¹, and he did not depart from the United States until August 1, 2011. The applicant was thus 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 misrepresentation. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant does not contest these findings of inadmissibility, but rather seeks a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182 (i) and 1182(a)(9)(B)(v), to reside in the United States with his U.S. citizen spouse, who filed a Form I-130 petition on his behalf that was approved in December 2011.

The applicant was additionally found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien who was removed from the United States and who subsequently reentered the United States without being admitted.

The Field Office Director found the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act, a ground of inadmissibility for which no waiver is available.² The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 27, 2012.

On appeal, the applicant contends that his U.S. citizen spouse would suffer extreme hardship if the waiver application is not approved, and submits additional evidence. The applicant also correctly avers that he never made a false claim of U.S. citizenship at the Brownsville, Texas port of entry on June 27, 2004. *See Footnote 1.*

¹ The Form I-130 Petition for Alien Relative (Form I-130) filed on the applicant's behalf indicates that he entered the United States without inspection in July 2000. These inconsistencies in entry dates, however, do not affect the determination of inadmissibility in the applicant's case.

² The Field Office Director also found the applicant inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim of U.S. citizenship on June 27, 2004 at the Brownsville, Texas port of entry. A subsequent examination revealed that this determination was made in error; the person making the false claim of U.S. citizenship in 2004 was not the applicant. Thus the applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act.

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.

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); and *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 ten 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 last departed from the United States in August 1, 2011. He is therefore statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating the applicant's waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.