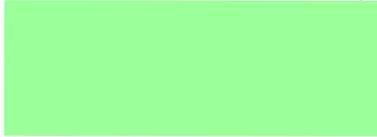




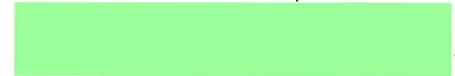
U.S. Citizenship
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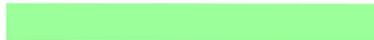


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OFFICE: BOSTON, MA

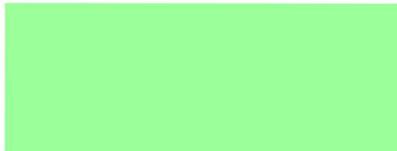


IN RE:



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:



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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Boston, Massachusetts, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director.

The applicant is a native and a citizen of El Salvador who was found to be inadmissible to the United States under 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), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure; and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having made material misrepresentations to obtain immigration benefits. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated July 20, 2011.

On appeal, the applicant submits new evidence for consideration.

The evidence of record includes, but is not limited to: statements from the applicant, his spouse and their family; medical documentation for the applicant's spouse; financial documents; and copies of relationship and identification documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that the applicant entered the United States without inspection on March 8, 1993. On the same day, the applicant was apprehended and put in deportation proceedings. When he was apprehended, the applicant stated his real name; however, he stated his birthdate as August 30, 1972. On August 31, 1993, an immigration judge ordered the applicant deported *in absentia*. In 2001, the applicant was granted Temporary Protected Status (TPS) with a different alien number. The record indicates that on his TPS applications, the applicant stated his birthdate as August 30, 1970. According to the record, the applicant, using his August 30, 1972 date of birth, departed the United States on September 16, 2006. The record also reflects that in 2008, the applicant obtained advance parole using the August 30, 1970 birthdate and was paroled into the United States on December 2, 2008.

The AAO notes that the applicant self-deported when he departed in 2006. However, the record contains no evidence concerning the applicant's reentry after his 2006 departure. In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8

U.S.C. § 1361. In the event that the applicant fails to prove his legal entry after his 2006 departure, the applicant would be inadmissible pursuant to section 212(a)(9)(C)(i)(II).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3^d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 212(a)(9)(C)(i)(II) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

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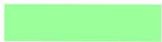
(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, 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 ten 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).

Therefore, the AAO remands the case to the director to make a determination regarding the applicant's manner of reentry into the United States after his departure in 2006. If the director determines that the applicant reentered the United States without inspection after his 2006 departure, the director will deny the applicant's waiver accordingly. However, if the director determines that the applicant reentered the United States after being inspected and admitted or



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paroled, the director will include the evidence of such lawful entry in the record and certify the decision to the AAO for review.

ORDER: The case is remanded to the field office director for further action consistent with this decision and for issuance of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.