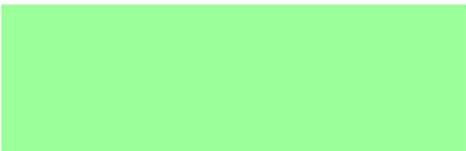
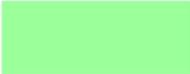
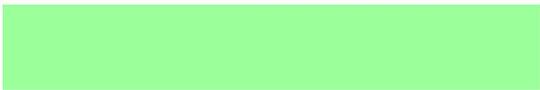




(b)(6)

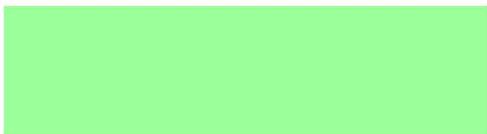


DATE: **MAR 21 2013** OFFICE: LIMA FILE: 
(RELATED)

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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

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

The applicant is a native and citizen of Bolivia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C), for having unlawfully reentered the United States after having been ordered removed. The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), due to her attempted admission to the United States through fraud or material misrepresentation and under 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant seeks a waiver of inadmissibility under section 212(i), 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse.

In a decision dated August 28, 2012, the Field Office Director concluded that the applicant was not eligible to apply for admission to the United States as a result of her inadmissibility under section 212(a)(9)(C) of the Act.

On appeal, counsel for the applicant states that the Field Office Director erred in finding that a second warrant of removal had been issued in July 1998. Counsel further indicated that a brief and/or evidence would be submitted to the AAO within 30 days of the filing of the appeal. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party may request additional time to file a brief, which is to be submitted directly to the AAO. No additional brief and/or evidence has been submitted and the record is considered complete.

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.

The record reflects that the applicant initially attempted to enter the United States on May 17, 1997 under an assumed name. It was determined that she was in possession of a photo-substituted passport and she was removed through the expedited removal process. In conjunction with her application for adjustment of status in August 2009, the applicant admitted that she reentered the

United States in July 1998 without being inspected or admitted.¹ The applicant's prior removal order was reinstated on August 25, 2009 and she was placed under an order of supervision. She was removed from the United States on September 13, 2011. As a result of the applicant's unlawful entry into the United States after her expedited removal order, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) 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 ten years ago, the applicant has remained outside the United States *and* the applicant has obtained consent to reapply for admission (Form I-212). In the present matter, it has not been 10 years since the applicant's last departure in 2011. As such, the applicant is currently statutorily ineligible to apply for permission to reapply for admission and thus no purpose would be served in adjudicating her application for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.

¹ The AAO notes that contrary to the Field Office Director's decision no warrant of removal was issued at this time as the applicant was able to enter the United States without inspection.