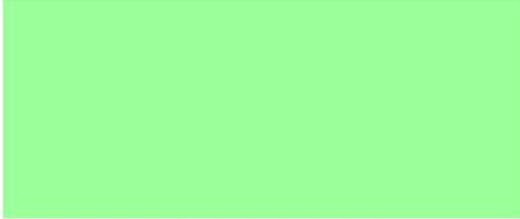


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

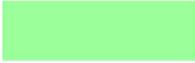


U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 10 2013**

OFFICE: LIMA, PERU

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality 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,

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, 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 Brazil who 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), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of her last departure from the United States. The record reflects the applicant entered the United States on a B-2 visitor visa in March 2000 with authorization to remain until September 2000, but remained until departing in 2004. The applicant was subsequently in the United States from 2004 until departing in November 2011. The applicant was also found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation for having made inconsistent statements regarding her re-entry to the United States in 2004 after having been previously found inadmissible. The applicant was further found inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. §1182(a)(9)(C)(i) for being unlawfully present after previous immigration violations. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility to reside in the United States with her U.S. citizen spouse.

The field office director concluded that as the applicant had failed to establish she had been inspected and admitted when she entered the United States in 2004 she is inadmissible under a provision for which there is no waiver. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated June 6, 2012.

On appeal counsel for the applicant states that the applicant did not provide misinformation or defraud the government and was admitted to the United States through a port of entry. Counsel states the applicant did not enter without inspection in 2004 and truthfully stated she was inspected and allowed to enter by an immigration inspector. In support of the appeal counsel for the applicant submits a brief, dated December 1, 2008. The entire record was reviewed and considered in rendering this decision.

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

(B) Aliens Unlawfully Present.-

(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.

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) of the Act provides, in pertinent part:

(i) 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 Act is inadmissible.

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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 has consented to the alien's reapplying for admission.

According to the field office director the record reflects the applicant was found inadmissible under section 212(a)(7)(A)(i)(I) as not being in possession of valid entry documents to enter the United States on February 2, 2004, when attempting to return from Mexico and was allowed to withdraw her application for admission at that time. The field office director further determined that the applicant had provided inconsistent information about her subsequent re-entry to the United States during an interview with USCIS concerning her Form I-485, Application to Register Permanent Resident or Adjust Status, in 2005 and during her immigrant visa interview with the Department of State in 2012. Based on this determination the field office director found the applicant inadmissible to the United States under section 212(a)(9)(C) of the Act as she has not established that she had been inspected and admitted when she re-entered the United States in 2004. The applicant was also found inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation.

On appeal counsel contends the applicant has not denied travelling to Mexico in 2004 and being questioned upon her attempt to return to the United States. Counsel contends the applicant withdrew her application for admission and shortly thereafter presented her California driver's license to an immigration inspector and was waved in to the United States, thus being admitted. Counsel asserts that during her adjustment of status interview with USCIS and her subsequent consular interview the applicant may have been confused about the dates of her entries to the United States, but she was truthful about the events. Counsel further contends confusion about the differing dates of entry had no effect on the applicant's admissibility.

The AAO notes that the record reflects that after being found inadmissible in February 2004 the applicant signed an I-275, Withdrawal of Application for Admission, indicating she understood the reasons for her inadmissibility, and allowed to return to Mexico. The record reflects that during her interview for adjustment of status the applicant initially stated she had re-entered the United States the same day as her withdrawal, February 1, 2004, then stated it was several days later, February 7, 2004. The record further reflects that during her immigrant visa interview with a consular officer the applicant stated that after withdrawing her application for admission at the port of entry in February 2004 she had been allowed into the United States to apply for adjustment of status, a statement inconsistent with the documentation that shows the applicant was not allowed entry in to the United State, but rather returned to Mexico.

Although given the passage of time the applicant may have been unsure of specific dates, it is reasonable to expect she would have known whether she had been refused entry into the United States and whether her entry after having been refused admission was on the same day or several

days later. Thus, the applicant has not met her burden of establishing that her re-entry to the United States in 2004 was after having been inspected and admitted by an immigration inspector rather than by having re-entered without inspection. The AAO therefore determines the applicant to be inadmissible under 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* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant departed the United States in November 2011, less than 10 years ago, and has not remained outside the United States the requisite 10 years after her last departure. She is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(a)(9)(B)(v) or section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether she has established extreme hardship to a qualifying relative or whether she merits a waiver as a matter of discretion. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.