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

(b)(6)

U.S. Citizenship and Immigration Services

Date: DEC 0 1 2014 Office: SEATTLE FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Mexico who was 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 procuring admission to the United States by fraud or willful misrepresentation of a material fact, and 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 for one year or more and seeking readmission within 10 years of her last departure. The applicant's spouse and two children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act in order to reside in the United States with her family.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Applicant for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated March 24, 2014.[1]

On appeal, counsel asserts that the Field Office Director's decision includes details from a different applicant's case, such as incorrect dates, alien numbers, and hardship factors; the decision reflects "erroneous conclusions of law and fact"; and the applicant's U.S. citizen daughter has a history of health issues. *Letter submitted with Form I-290B, Notice of Appeal or Motion*, dated May 23, 2014.

The record includes, but is not limited to, counsel's brief, a physician's letter for the applicant's daughter, results of the applicant's polygraph examination, the applicant's sworn statement taken during her adjustment interview, financial records, statements from the applicant and her spouse, letters of support, and country-conditions information about Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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-
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> . . . .
>
> (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

[1] The record reflects that counsel received the decision on April 28, 2014.

> alien's departure or removal from the United States, is inadmissible.
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> . . . .
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> (v) Waiver.-The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the [Secretary] 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.

The record reflects that applicant entered the United States without inspection in or around April 1993, and she returned to Mexico in or around August 2000. She accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions under the Act, until August 2000, the date she returned to Mexico. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her August 2000 departure from the United States. The applicant does not contest this ground of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 that:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [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.

According to the applicant's sworn statement before a U.S. Citizenship and Immigration Services (USCIS) officer, dated March 15, 2012, the applicant paid an individual for a passport to illegally enter the United States; the car she was traveling in from Mexico was stopped at the San Ysidro Port-of-Entry in September 2000; the U.S. border official never asked her questions; the U.S. border official only asked questions of the driver of the vehicle; she had the passport in her hand; and the officer said "come on by." In her September 19, 2011 declaration, the applicant stated that she "started to get out the passport" when the officer said "Go right ahead."

Counsel asserts that *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010) and *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980) support the applicant's claim that she was admitted to the United States when the U.S. border official waved the vehicle in which she was traveling in to the United States. In *Matter of Areguillin* the BIA determined that the respondent bears the burden of establishing that she presented herself for inspection. In that case, however, the immigration judge had not addressed the credibility and sufficiency of the applicant's evidence, specifically her uncorroborated testimony that she was admitted to the United States without documentation. *Matter of Areguillin*, at 310. The BIA remanded the case to the immigration judge to give the respondent an opportunity to provide additional evidence in support of her assertions. *Id.* at 310-311. In *Matter of Quilantan,* the BIA found "the basic facts" were not in dispute, including the respondent's claim that she was waved in to the United States by a U.S. border agent without any questioning and without a valid entry document. *Matter of Quilantan*, 25 I&N Dec. at 290. The BIA noted that the immigration judge earlier had found "the facts were undisputed that the respondent presented herself for inspection" and concluded that the respondent was admitted to the United States. *Id.* at 293.

In the applicant's case, the basic facts are in dispute. The record does not include sufficient evidence that the applicant was admitted to the United States. The record includes a polygraph examination in which the applicant answered "yes" to four questions: whether she entered the United States in September 2000 at the San Ysidro inspection point; whether she was in the front seat of the vehicle in plain view; whether the border agent spoke to the driver; and whether she was allowed to enter the United States by the border agent. According to the examiner the applicant answered those questions truthfully. The examination, however, does not address the other specific details of her sworn statement. In addition, the record does not include documentation to corroborate the applicant's claim that she was admitted to the United States without presenting documentation that would allow her to be admitted. The burden of proof is on the applicant to establish that she was admitted to the United States. As this burden has not been met, we find that the record reflects that she entered the United States without inspection.

The record reflects that the applicant entered the United States without inspection. The evidence does not establish that she presented a fraudulent passport to a U.S. government official in order to procure admission to the United States. As such, we find that she did not willfully misrepresent herself in seeking to procure admission to the United Stated and is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act.

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

> Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
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> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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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.
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> (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.

The record reflects that the applicant accrued more than one year of unlawful presence and subsequently entered the United States without inspection. Therefore, she is inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and subsequently entering the United States without being admitted.

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* USCIS has consented to the applicant's reapplying for admission.

The record establishes that the applicant's last departure from the United States occurred in August 2000 and that she entered the United States without inspection in September 2000. She currently resides in the United States and has not remained outside of the United States for the required period since her last departure. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. The appeal of the denial of the waiver application is dismissed as a matter of discretion, as its approval would not result in the applicant's admissibility to the United States.

In application proceedings it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.