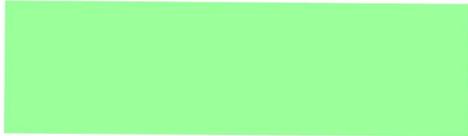


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Office of Administrative Appeals  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090

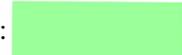


U.S. Citizenship  
and Immigration  
Services

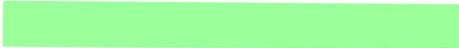


DATE: DEC 11 2011 OFFICE: LOS ANGELES

FILE:



IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California, denied the waiver application and an appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the previous decision of the AAO is affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. See *Decision of the Field Office Director*, dated December 6, 2008.

On appeal, this office concurred with the Field Office Director that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. We further determined that the applicant was inadmissible pursuant to section 212(a)(9)(C), for illegally entering the United States after having been removed. As a result of this additional finding of inadmissibility, the applicant was statutorily ineligible to obtain consent to reapply for admission to the United States as the applicant had not been outside of the United States for a total of ten years since her most recent expedited removal. We thus determined that no purpose would be served in adjudicating her waiver under section 212(i) of the Act. The appeal was dismissed. See *Decision of the AAO*, dated April 10, 2012.

On motion, the applicant contends she is eligible to adjust status and further asserts that she has established extreme hardship to a qualifying relative. The entire record was reviewed and considered in rendering this decision.

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 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

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 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:

(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.

....

(v) Waiver.-The [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.

....

(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. . . .

The record reflects that on May 13, 2000, the applicant attempted to procure entry to the United States with false documentation. On May 14, 2000, she was expeditiously removed from the United States for a period of five years. On May 16, 2000, the applicant was again expeditiously removed from the United States for a period of twenty years as a result of attempting to procure entry to the United States with false documents on May 15, 2000. The record thus establishes the applicant's inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation.

The record further establishes that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for unlawful presence. In a May 16, 2000 sworn statement, the applicant admitted that she had resided in the United States for over 10 years without authorization prior to attempting to enter the United States with false documentation on two separate occasions in May 2000. The Form I-485 and Form I-601 completed by the applicant also indicate that she entered the United States in August 1990, almost a decade prior to her first expedited removal on May 14, 2000. The record thus establishes that the applicant is also inadmissible for unlawful presence pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The record also establishes that the applicant entered the United States without inspection sometime between May 16, 2000 and April 6, 2001, when she married her spouse in California, after accruing unlawful presence as outlined above. As such, the applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act, for having entered the United States without inspection after having accrued unlawful presence. Finally, the record establishes that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for illegally entering the United States after having been removed on two separate occasions as outlined above.

An alien who is inadmissible under section 212(a)(9)(C)(i)(I) 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); *see also 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)(i)(I) of the Act, the Board of Immigration Appeals (BIA) has held that 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.

As the record does not establish that the applicant has been outside of the United States for a total of ten years since her most recent expedited removal in May 2000, she is currently statutorily ineligible to apply for permission to reapply for admission into the United States after

deportation or removal pursuant to section 212(a)(9)(C)(iii) of the Act.<sup>1</sup> As such, the Form I-601 is denied as a matter of discretion.

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. Accordingly, the motion will be granted and the previous decision of this office is affirmed.

**ORDER:** The motion is granted and the previous decision of the AAO is affirmed.

---

<sup>1</sup> The applicant has filed a motion to reconsider her Form I-212 denial with this office. This office's decision on the applicant's motion to reconsider her Form I-212 denial is being provided to the applicant under separate cover.