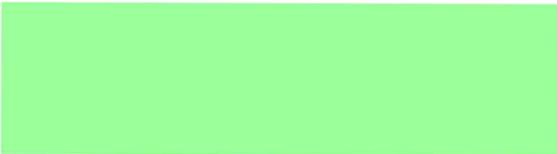




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 04 2014** Office: NEBRASKA SERVICE CENTER



IN RE:



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 Director, Nebraska Service Center, 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 attempting to procure admission to the United States through fraud or the 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 was further found inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for having been ordered removed from the United States under section 235(b)(1) of the Act, and pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed from the United States and subsequently re-entering the United States without being admitted. The applicant's spouse and three children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act in order to reside in the United States with her family.

The Director found that because the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, and she is not eligible to request consent to reapply until she has been outside of the United States for ten years, the applicant would remain inadmissible even if the waiver were granted. He therefore denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), as a matter of discretion. *Decision of the Director*, dated June 5, 2013.

On appeal, counsel asserts that the Director's decision is incorrect, as it was based on incorrect facts; the applicant denies that she was ordered deported; and the Director has not provided evidence that a deportation took place. *Form I-290B, Notice of Appeal or Motion (Form I-290B)*, dated July 5, 2013. The Form I-290B indicates that a brief or evidence will be sent within 30 days. However, the AAO has not received this material. Accordingly, the record is considered complete as of the decision date.

The record includes, but is not limited to, the Form I-290B, a psychological evaluation of the applicant's spouse, financial records, country-conditions information about Mexico, photographs, documents in Spanish¹ and the applicant's immigration documents. The entire record, except for the untranslated documents in Spanish, was reviewed and considered in arriving at a decision on the appeal.

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

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

¹ As the applicant failed to submit certified translations of the documents in Spanish, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security, "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.

The record reflects that the applicant presented another individual's Form I-586, Nonresident Alien Border Crossing Card, when seeking to procure admission to the United States at the [redacted] port of entry on June 30, 1999. On June 30, 1999 the applicant, using the name [redacted] was ordered expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. Based on this misrepresentation, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this ground of inadmissibility.

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.

....

(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.

The applicant claims that she entered the United States without inspection on June 30, 1999, after her removal earlier that day, and she departed the United States in June 2012. The applicant accrued unlawful presence during this period of time. 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 June 2012 departure from the United States. The applicant does not contest this ground of inadmissibility.

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

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.- Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the [Secretary] has consented to the alien's reapplying for admission.

Section 212(a)(9)(C)(i) 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 . . . [Secretary] has consented to the alien's reapplying for admission....

On June 30, 1999, the applicant was ordered removed from the United States pursuant to section 235(b)(1) of the Act and subsequently entered the United States without inspection on the same day. The AAO finds that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act, for having been ordered removed under section 235(b)(1) of the Act. The AAO finds that the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, for having been ordered removed under section 235(b)(1) of the Act and re-entering the United States without being admitted.

Counsel asserts that the Director's decision is incorrect because according to the applicant, she never was ordered deported; and the Director has not provided evidence that a deportation took place. The record includes Form I-860, Notice and Order of Expedited Removal, dated June 30, 1999. The Form I-860 includes a certificate of service signed by the immigration inspector. The record also includes Form I-296, Notice to Alien Ordered Removed/Departure Verification, dated June 30, 1999, that reflects the immigration inspector's signature and the applicant's fingerprint. In addition, the record includes Form I-213, Record of Deportable/Inadmissible Alien (Form I-213), describing the applicant's June 30, 1999 attempted entry. The Form I-213 states that she was served Form I-296 and Form I-860, and she was ordered removed under section 235(b)(1) of the Act.

The burden of proof is on the applicant to establish that she is not inadmissible. The record does not include, and the applicant does not submit, evidence that establishes that she was not removed.

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 returned to Mexico in June 2012. She is thus currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act.

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.