

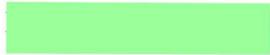


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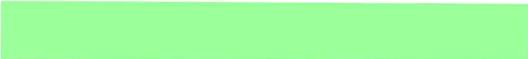


DATE: FEB 27 2014

Office: LOS ANGELES



IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 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, Los Angeles, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of Guatemala 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 seeking to procure U.S. admission by fraud or willful misrepresentation.¹ He is also inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having reentered the United States without being admitted after having been ordered removed. He is seeking a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, March 26, 2009. On appeal, the AAO determined that the applicant was inadmissible under section 212(a)(9)(C) of the Act and was ineligible to apply for permission to reapply for admission and concluded that no purpose would be served in adjudicating his waiver application under section 212(i). *See Decision of the AAO*, August 26, 2013.

On motion, counsel for the applicant asserts that regulatory authority, specifically the provision at 8 C.F.R. § 212.7(d), allows the applicant to seek admission before expiration of the statutory period by showing extraordinary circumstances. In support, counsel provides a brief asserting that, as regulatory authority contemplates such early filing of an application for permission to reapply for admission even for aggravated felons, the applicant is also entitled to pursue an early application. Counsel therefore asserts that the AAO should entertain the applicant's claims that a qualifying relative would suffer extreme hardship due to the waiver denial. The record consists of counsel's earlier briefs, including exhibits, filed in support of the original 2006 waiver application, as well as of evidence submitted with the waiver application, documentation of the applicant's expedited removal, and his asylum application.

¹ Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

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)(1) of the Act provides:

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 [...].

The applicant does not dispute that the record indicates he entered the United States in November 1990 without being admitted and departed in August 1998. He attempted to procure admission on November 7, 1999 using another person's travel document, was removed pursuant to section 235(b)(1) of the Act on November 8, 1999, reentered the United States without admission on November 9, 1999, and has not departed. The field office director found that he had thereby incurred inadmissibility for fraud or willful misrepresentation. Besides being inadmissible under section 212(a)(6)(C)(i) of the Act, as determined by the field office director, the applicant is also inadmissible pursuant to sections 212(a)(9)(C)(i)(I) and (II) of the Act, 8 U.S.C. §§ 1182(a)(9)(C)(i)(I) and (II), for reentering the country without admission or parole after being unlawfully present for one year or more and after being ordered removed.

Section 212(a)(9)(C) of the Act provides:

(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 of Homeland Security has consented to the alien's reapplying for admission.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for permission 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). To avoid inadmissibility under this section, 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.

Counsel asserts that the provisions at 8 C.F.R. §§ 212.2 (a)-(b) and 212.7(d) permit the applicant to seek permission to reapply for admission despite being present in the United States. The provisions cited, however, do not apply to the applicant's situation, as they address permission to reapply for admission under section 212(a)(9)(A) and waivers under section 212(h) of the Act rather than permission to reapply under section 212(a)(9)(C)(ii). Section 212.7(d) states, in pertinent part:

Criminal grounds of inadmissibility involving violent or dangerous crimes. The [Secretary], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, [...].

As the regulations cited by counsel do not address the applicant's inadmissibility under section 212(a)(9)(C)(i) of the Act or permission to reapply under section 212(a)(9)(C)(ii), they are not applicable to the present case. Therefore, counsel has not shown that the applicant is eligible at this time to seek permission to reapply nor demonstrated that the controlling precedent of *Torres-Garcia* need not be followed.

In the present matter, the applicant is present in the United States, and he must depart and remain outside the United States for ten years before he is eligible for permission to reapply. As such, no purpose would be served in adjudicating his waiver under section 212(i) of the Act.

Having found the applicant statutorily ineligible for permission to reapply for admission at this time, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative or whether he merits a waiver as a matter of discretion. In proceedings for 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.