

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**

(b)(6)

[REDACTED]

Date: **JAN 31 2014**

Office: LOS ANGELES, CA [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i),
8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:
[REDACTED]

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant's husband would suffer extreme hardship if his wife's waiver application were denied, particularly considering he has lived in the United States for many years, he has battled anxiety and depression in the past, the couple has two U.S. citizen children, and country conditions in Mexico. Counsel submits additional documentation on 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) 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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subsection to extreme cruelty;
and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

In this case, the record shows that the applicant attempted to enter the United States on March 24, 2000, by presenting a border crossing card bearing the name ' [REDACTED] '. The applicant was referred to secondary inspection where she admitted she bought the document for \$300 and claimed her true name was " [REDACTED] " with a date of birth of April 13, 1973. The applicant, using the name " [REDACTED] " was placed in expedited removal proceedings, ordered removed, and removed to Mexico the same day. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated March 24, 2000; *Record of Deportable/Inadmissible Alien (Form I-213)*, dated March 24, 2000; *Notice to Alien Ordered Removed/Departure Verification (Form I-296)*, dated March 24, 2000; *Notice and Order of Expedited Removal (Form I-860)*, dated March 24, 2000. The record also shows that after the applicant's removal, she entered the United States without inspection in April 2000. *Application to Register Permanent Residence or Adjust Status (Form I-485)*, filed April 9, 2007; *see also Form I-485*, dated October 8, 2002.

Because the applicant re-entered the United States without being admitted after she had been ordered removed, she is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act. There is no evidence in the record that the applicant is a VAWA self-petitioner and, therefore, there is no waiver available for this additional ground of inadmissibility.

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 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 Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, the 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.

In this case, the applicant continues to reside in the United States. Therefore, she remains statutorily ineligible to apply for permission to reapply for admission until she has remained outside the United States for at least ten years. Accordingly, the appeal must be dismissed as no purpose would be

served in discussing whether she has established the existence of extreme hardship to a qualifying relative.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant is not eligible to apply for consent to reapply at this time. Accordingly, no purpose would be served in evaluating whether the applicant has established extreme hardship to a qualifying relative and the underlying waiver application must be dismissed.

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.