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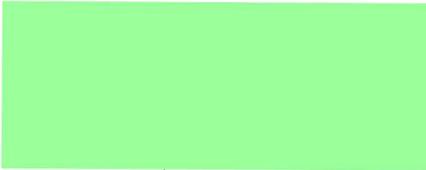
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAY 08 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: 

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

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 Nebraska Service Center Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan 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 attempting to procure admission into the United States through willful misrepresentation of a material fact; under 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 in the United States for more than one year and seeking readmission within ten years of her last departure from the United States; and under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having entered without admission or parole after having been ordered removed. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The director concluded that the applicant did not qualify for the exception under section 212(a)(9)(C)(ii) of the Act, because the applicant's last departure from the United States was less than ten years ago. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Director*, dated October 10, 2013.

On appeal, counsel contests the inadmissibility under section 212(a)(9)(C)(i)(II) of the Act and states that the applicant may have withdrawn her request for admission instead of being removed. Counsel also asserts that the director denied the waiver without affording the applicant an opportunity to address derogatory evidence against her and without explaining the positive and negative factors considered when exercising discretion. See *Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed November 12, 2013.

The record contains, but is not limited to: Form I-290B; a statement by the applicant's spouse; marriage, birth, death, and naturalization certificates; the applicant's spouse's psychological evaluation; medical documents; house deed and mortgage statements; and letters from the applicant's children's school. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant traveled to the United States using a photo-substituted Pakistani passport and arrived at John F. Kennedy International Airport, New York on June 9, 2000. A U.S. immigration officer found her inadmissible based on her misrepresentation of a material fact and issued an order of expedited removal under section 235(b)(1) of the Act. The applicant was removed the same day. The applicant states on her Form I-601, and other documents in the record show, that she re-entered the United States without admission in June 2000 and remained in the United States until August 2011.

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 -

(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.

Counsel asserts that the applicant was not afforded the opportunity to rebut derogatory evidence in her file, as she was never given notice regarding her removal. The record contains a Form I-296, Notice to Alien Ordered Removed/Departure Notification, which reflects the applicant's signature and photograph, and a Form I-860, Notice and Order of Expedited Removal, which indicates service on the applicant on June 9, 2000. Thus, the record reflects that the applicant was given notice of her expedited removal. An opportunity to rebut evidence that is known to the applicant is not required by U.S. Citizenship and Immigration Services (USCIS). See USCIS Policy Memorandum, Requests for Evidence and Notices of Intent to Deny (Subject file [REDACTED] (June 3, 2013) (available at [REDACTED]

[REDACTED] Counsel also asserts that the applicant may have been permitted to withdraw her request for admission. The record contains no evidence of a withdrawal of her application for admission, and counsel provides no evidence to support his assertion. As the record reflects that the applicant was removed under section 235(b)(1) and re-entered the United States without admission in 2000, the AAO concurs with the director's conclusion that she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

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 Pakistan in August 2011, less than ten years ago. She is thus 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.