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

(b)(6)

U.S. Citizenship and Immigration Services

Date: OCT 0 8 2014 Office: SAN SALVADOR (TEGUCIGALPA) 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); Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 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 Field Office Director, Tegucigalpa, Honduras. An appeal of the denial was sustained by the Administrative Appeals Office (AAO). The prior decision was withdrawn and the matter was reopened pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The appeal will be dismissed.

The applicant is a native and citizen of Costa Rica 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 admission to the United States through fraud or misrepresentation. On November 29, 2003, the applicant tried to enter the United States with a backdated Costa Rican entry stamp in his passport in an attempt to conceal the fact that he had overstayed his visa on a prior visit to the United States. In addition, the applicant was found to be inadmissible to the United States 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 in the United States for more than one year. The applicant entered the United States in February 2004 without inspection, and remained in the United States until August 7, 2010, a period of more than one year. The applicant did not contest the findings of inadmissibility, but rather sought a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen wife.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated June 14, 2012.

On appeal, the applicant was found to have established extreme hardship to a qualifying relative, and his appeal was sustained. *See Decision of the AAO*, dated April 24, 2013.

After the applicant's appeal was sustained, on September 9, 2013, the U.S. consulate in San Jose, Costa Rica, attempted to contact the applicant. On September 10, 2013, the applicant informed the consulate that he had reentered the United States without inspection in 2012 and now resides in the United States. Based on this information, the applicant is now inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I).

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.

As the applicant entered the United States without inspection after having been unlawfully present for more than one year, he now is subject to section 212(a)(9)(C)(i)(I) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission 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). 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 10 years ago, the applicant has remained outside the United States for 10 years *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant is currently residing in the United States. He is therefore statutorily ineligible to apply for permission to reapply for admission until such time as he departs the United States, and remains outside the United States for more than 10 years. As such, no purpose would be served in adjudicating his waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether he has established extreme hardship to his U.S. citizen spouse or whether he merits a waiver as a matter of discretion.

On June 6, 2014, we issued a notice of our intent to dismiss the appeal for the reasons provided herein, and granted the applicant thirty (30) days to respond. We did not receive a response within the allotted time period, and therefore the appeal will 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.