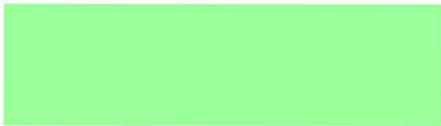


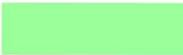


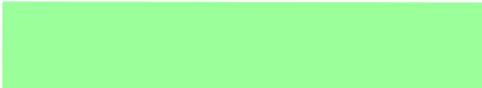
U.S. Citizenship
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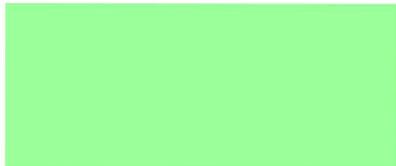
DATE: **OCT 22 2014** Office: MANCHESTER, NH

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)

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, Manchester, New Hampshire, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil 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 by fraud or willful misrepresentation of a material fact. The applicant's spouse is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with her spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated October 3, 2013. In his decision denying the applicant's motion to reopen and reconsider dated April 1, 2014, the Field Office Director also found that the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having been ordered removed and subsequently entering the United States without being admitted.¹

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship; inadmissibility under section 212(a)(9)(C)(i) of the Act is not directly relevant to the issue of hardship; and inadmissibility under section 212(a)(9)(C)(i) of the Act would best be addressed by a Notice of Intent to Deny (NOID) or in the denial of the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). *Brief in Support of Appeal*, dated May 30, 2014.

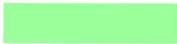
Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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) of the Act provides that:

- (1) The Attorney General [now Secretary of the Department 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

¹ Although the text quoted in his decision is from section 212(a)(9)(A) of the Act instead of 212(a)(9)(C), the Field Office Director correctly describes the applicant's inadmissibility under 212(a)(9)(C) in the paragraph following the quoted text.



[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 a photo-substituted Brazilian passport and U.S. visitor's visa in the name of [REDACTED] to U.S. immigration authorities while seeking admission to the United States on April 8, 2004. She is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States through willful misrepresentation of a material fact. The applicant does not contest the finding of inadmissibility.

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.

The record also reflects that the applicant received an expedited removal order on April 8, 2004, after she attempted to procure admission to the United States. She was removed a day later. The applicant subsequently entered the United States without inspection on July 1, 2004. Therefore, she is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed and subsequently entering the United States without being admitted.

Counsel asserts that the applicant's inadmissibility under section 212(a)(9)(C)(i)(II) of the Act should have been addressed in a NOID or decision denying the applicant's Form I-485. The Field Office Director, however, is not required to issue a NOID; doing so is discretionary. A NOID is "required when derogatory information is uncovered during the course of the adjudication that is not known to the individual, according to 8 CFR 103.2(b)(16)." See USCIS Policy Memorandum,



Requests for Evidence and Notices of Intent to Deny, PM-602-0085, dated June 3, 2013. As the applicant was aware of the derogatory information at issue here, specifically her entry without inspection after having been ordered removed, a NOID was not required before the Field Office Director denied her Form I-601. In addition, although the ground of inadmissibility was not discussed in the denial of the Form I-485, it was addressed in the Form I-601 motion denial dated April 1, 2014.

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 U.S. Citizenship and Immigration Services has consented to the applicant's reapplying for admission.

The record establishes that the applicant's last departure from the United States occurred on April 9, 2004 and that she entered the United States without inspection on July 1, 2004. She currently resides in the United States and has not remained outside of the United States for the required period since her last departure. 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 inadmissibility 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 been met.

ORDER: The appeal is dismissed.