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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 14 2015 OFFICE: LOS ANGELES FILE:

IN RE:

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 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 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 having attempted to procured entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her father and daughter in the United States.

The Field Office Director found that the applicant's daughter is not a qualifying relative in the context of the waiver application and that the applicant had failed to submit documentation concerning hardship to her father. The Field Office Director also found that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) and section 212(a)(6)(c)(ii) of the Act, for entering without admission after her removal and a false claim to U.S. citizenship, respectively, and denied the Form I-601 application. *Decision of the Field Office Director,* dated October 24, 2013.

On appeal, counsel asserts that the applicant's U.S. citizen father is a qualifying relative who would suffer extreme hardship upon denial of the applicant's waiver application.

In support of the waiver application and appeal, the applicant submitted medical documentation concerning her father,a letter from the applicant, a letter from the applicant's sister, a letter from the applicant's father, medical documentation concerning the applicant's daughter and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.
>
> (ii) Falsely Claiming Citizenship
>
> > (I) In general.- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

Section 212(i) of the Act provides:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General (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 attempted to enter the United States on August 31, 1998, with the passport of her sister. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

As the applicant's sister is a U.S. citizen and the applicant attempted to enter the United States on August 31, 1998, with the passport of a U.S. citizen, she is also inadmissible under section 212(a)(6)(C)(ii) of the Act for falsely representing herself to be a citizen of the United States for any benefit under the Act. Section 212(i) provides a waiver for applicants who are inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrate extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent, but does not provide such a waiver to individuals under section 212(a)(6)(C)(ii). As such, there is no waiver available for the applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act.

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 has consented to the alien's reapplying for admission.

The applicant was ordered removed from the United States in section 235(b)(1) proceedings on August 31, 1998 and was removed on the same date. The applicant subsequently entered the United States without admission or parole in September 1998.

Accordingly, the applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission or parole subsequent to her removal from the United States.

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); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). 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. In the present matter, the applicant departed the United States on August 31, 1998 and contends that she returned to the United States on September 1998. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Having found the applicant statutorily ineligible for relief at this time, under both section 212(a)(6)(C)(ii) and section 212(a)(9)(C) of the Act, no purpose would be served in discussing whether she has established extreme hardship to a qualifying relative or whether she merits a waiver as a matter of discretion. 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.