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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**

Date: **JAN 29 2015** Office: LOS ANGELES, CA

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 Field Office Director, Los Angeles, California, rejected the Application for Waiver of Grounds of Inadmissibility (Form I-601) and on appeal, the Administrative Appeals Office (AAO) remanded the matter to the Field Office Director for adjudication of the application. On January 10, 2014, the Field Office Director entered a new decision, and the matter is now before the AAO on certification. The underlying appeal will be dismissed.

The applicant is a native and citizen of Mexico who, on July 27, 1999, presented a border crossing card bearing the name [REDACTED] to immigration officials in an attempt to procure admission into the United States. She was placed into secondary inspection. The applicant admitted that she was not the true owner of the document and that she did not have valid documentation to enter the United States. She admitted under oath that she knew it was illegal to attempt to enter the United States by presenting the document. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for attempting to enter the United States by fraud and for being an immigrant without valid documentation. On July 27, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On November 1, 2007, the applicant filed the Form I-601 and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), indicating that she continued to reside in the United States. On March 4, 2009, the Form I-601 was denied. The applicant's subsequent motion to reopen or reconsider the Form I-601 was granted on July 31, 2009; however, in a separate decision issued that same day, the Form I-601 was rejected. The applicant filed an appeal of that rejection, and we remanded the application to the Field Office Director for proper adjudication, as it was improper to reject the application. *See AAO Decision*, February 24, 2011. We indicated that, if the decision were adverse to the applicant, it should be certified to us for review. *Id.*

The Field Office Director subsequently issued a decision on the Form I-601, finding that the applicant had not demonstrated that a qualifying relative would experience extreme hardship in light of her inadmissibility. *See Decision of Field Office Director*, January 10, 2014.

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.

As noted on appeal, the record reflects that on July 27, 1999, the applicant was ordered removed under section 235(b)(1) of the Act. The applicant later indicated that on August 1, 1999, she entered the United States without inspection, and has remained ever since. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act.

An alien who is inadmissible under section 212(a)(9)(C)(i) 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 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)(i) of the Act, the Board of Immigration Appeals (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.

As the record does not establish that the applicant has been outside of the United States for a total of ten years since her expedited removal in July 1999, she is currently statutorily ineligible to apply for permission to reapply for admission into the United States after deportation or removal pursuant to section 212(a)(9)(C)(iii) of the Act.¹ As such, the Form I-601 is denied 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The applicant has filed a motion to reopen or reconsider her Form I-212 denial with this office. This office's decision on the applicant's motion to reopen or reconsider her Form I-212 denial is being provided to the applicant under separate cover.