



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 11 2015**

Office: LOS ANGELES

FILE:

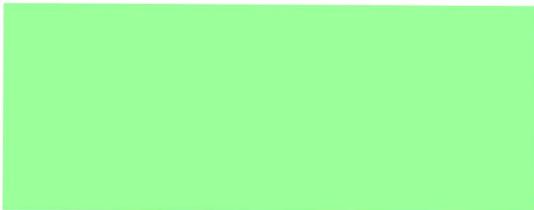


IN RE: Applicant:



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, Los Angeles, California, and 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 sections 212(a)(6)(C)(i) and 212(a)(9)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(C)(i), for having sought admission to the United States through fraud or willful misrepresentation and having re-entered the United States without admission after having been removed. The applicant does not contest the Field Office Director's findings of inadmissibility. Rather, she seeks a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to reside in the United States with her family.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. While noting in her decision that the applicant seeks a waiver of inadmissibility under section 212(a)(9)(v) of the Act, the Field Office Director did not find the applicant inadmissible for unlawful presence in the United States. She denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 4, 2014.

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

- (i) In general. 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 chapter 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 [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 [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.

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 of Homeland Security has consented to the alien's reapplying for admission.

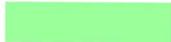
The record reflects that the applicant was expeditiously removed on January [REDACTED] after she sought admission into the United States with a counterfeit Mexican passport and I-551 ADIT stamp. She states that she reentered the United States the same day without inspection. She therefore is inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking admission through fraud or the willful misrepresentation of a material fact, and she requires a section 212(i) waiver of inadmissibility. She is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, because she reentered the United States without being admitted after she had been ordered removed.

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 was deported to Mexico on January [REDACTED]. She is thus currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether she has established extreme hardship to her lawful permanent resident parents or whether she merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

In the present matter, the applicant's last departure from the United States occurred on January [REDACTED]. The applicant reentered the same day and is currently residing in the United States. She

(b)(6)



NON-PRECEDENT DECISION

Page 4

therefore has not remained outside the United States for 10 years since her last departure. The applicant is 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.

ORDER: The appeal is dismissed. The waiver application is denied.