



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-G-G-D-L-

DATE: JAN. 8, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Philadelphia, Pennsylvania, denied the application. We dismissed a subsequent appeal. The matter is now before us on motion to reopen and reconsider. The motions will be denied.

The Applicant 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 procure entry into the United States by fraud or willful misrepresentation, and under 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 and seeking readmission within 10 years of her last departure from the United States. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, and seeks a waiver of inadmissibility to reside in the United States with her family.

The Director determined that the Applicant had not established that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, we concurred with the Director that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, for having attempted to procure entry into the United States by fraud or willful misrepresentation, and under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. We further determined that the Applicant was also inadmissible under section 212(a)(9)(C)(i)(I) of the Act, for having entered the United States without being admitted after having accrued unlawful presence of more than one year, and under section 212(a)(9)(C)(i)(II) of the Act, for having entered the United States without being admitted after having been removed from the United States. We concluded that because the Applicant was mandatorily inadmissible under section 212(a)(9)(C) of the Act and she was ineligible for the exception to this ground of inadmissibility until she had remained outside the United States for 10 years, no purpose would be served in the favorable exercise of discretion in adjudicating the

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Applicant's waiver application. We further found that extreme hardship to a qualifying relative had not been established. The appeal was dismissed accordingly.

On motion, filed on November 7, 2012, and received by us on August 3, 2015, the Applicant states on the Form I-290B, Notice of Appeal or Motion, that extreme hardship has been established. Despite the notation on the Form I-290B that a brief or additional evidence is attached, we note that no additional information has been received as of today.

As we noted in dismissing the Applicant's appeal, the record indicates that the Applicant first entered the United States without inspection near [REDACTED] California, in January 1997, and remained in the United States until April 2000. The record further reflects that on March 14, 2001, the Applicant attempted to enter the United States by presenting a passport and fraudulent visa, and was subsequently removed. In January 2009, the Applicant entered the United States without inspection for a second time. The Applicant is thus inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act and requires a waiver of inadmissibility. The Applicant does not contest these findings on motion.

As we determined on appeal, the Applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act, for having entered the United States without being admitted after having accrued unlawful presence of more than one year, and under section 212(a)(9)(C)(i)(II) of the Act, for having entered the United States without being admitted after having been removed from the United States. The Applicant does not contest these additional findings of inadmissibility on motion.

Section 212(a)(9)(C) of the Act provides:

(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 we explained when we dismissed the appeal, an individual who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the individual has been outside the United States for more than 10 years since the date of the individual'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 10 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 Applicant is currently residing in the United States and therefore, has not remained outside the United States for 10 years since her last departure. The Applicant is thus currently statutorily ineligible to apply for permission to reapply for admission at this time and consequently, no purpose would be served in addressing extreme hardship or discretion pursuant to sections 212(i) and 212(a)(9)(B) of the Act. On motion, the denial of the waiver application is affirmed as a matter of discretion as its approval would not result in the Applicant's admissibility to the United States.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we deny the motion to reopen and the motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-G-G-D-L-*, ID# 15254 (AAO Jan. 8, 2016)