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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE:



Office: MEXICO CITY, MEXICO  
(PANAMA CITY, PANAMA)

Date: AUG 02 2010

IN RE:

Applicant:



APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tang Syel*  
*for*

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 ten years of his last departure from the United States; and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182 (a)(9)(A), for being ordered removed from the United States. The record indicates that the applicant is married to a United States citizen and the father of a United States citizen daughter. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen wife and daughter.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. Additionally, the Acting District Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212).<sup>1</sup> *Decision of the Acting District Director*, dated March 4, 2008.

On appeal, the applicant's spouse claims that she is suffering hardship without the applicant's support. *See statement from Joanna Beltran*, attached to Form I-290B, filed April 4, 2008.

The AAO only received one Form I-290B with filing fee; therefore, it will only adjudicate one appeal (Form I-601 appeal).

The record includes, but is not limited to, statements from the applicant and his wife, a letter of support for the applicant and his wife, birth certificates for the applicant's wife and daughter, medical and psychological documents for the applicant's wife, the applicant's marriage certificate, and documents from the applicant's immigration proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present case, the record indicates that the applicant entered the United States on May 12, 1994 without inspection. On the same day, an Order to Show Cause (OSC) was issued against the

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<sup>1</sup> The Adjudicator's Field Manual provides guidance on adjudicating Forms I-601 and I-212 that are filed together. 43.2 Adjudication Processes.

(c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

applicant. On December 7, 1995, an immigration judge ordered the applicant removed *in absentia*. On January 11, 1996, a Warrant of Deportation (Form I-205) was issued. On August 23, 2003, the applicant married his wife, a United States citizen, in Georgia. On June 2, 2005, the applicant's wife filed a Form I-130 on behalf of the applicant. On February 8, 2006, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 6, 2006, the applicant's Form I-130 was approved. On June 9, 2006, the Director, Missouri Service Center, administratively closed the applicant's Form I-485. On October 4, 2006, another Form I-205 was issued. On November 20, 2006, the applicant was removed from the United States. On February 20, 2007, the applicant filed a Form I-212 and Form I-601. On March 4, 2008, the Acting District Director denied the applicant's Form I-212 and Form I-601, finding that the applicant had accrued more than a year of unlawful presence, failed to demonstrate extreme hardship to his United States citizen spouse, and failed to merit a favorable exercise of discretion. In 2007, the applicant reentered the United States without inspection. On January 14, 2010, the applicant's previous order of removal was reinstated. On January 25, 2010, another Form I-205 was issued. On March 19, 2010, the applicant was removed from the United States.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until February 8, 2006, the date the applicant filed his Form I-485. On November 20, 2006, the applicant was removed from the United States. In 2007, he reentered the United States without inspection and remained until March 19, 2010, when he was again removed from the United States. As the applicant is seeking admission to the United States within ten years of his November 20, 2006 removal, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted.

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, only those individuals who have remained outside the United States for at least ten years since their last departure are eligible for consideration. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record does not reflect that the applicant in the present matter has resided outside of the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and the AAO finds no purpose would be served in considering the merits of his Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.