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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO

Date: MAR 06 2010

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), Mexico. 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 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. The applicant is the son of a lawful permanent resident and he seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated January 6, 2007, the district director found that the applicant failed to establish extreme hardship to his lawful permanent resident mother as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion.<sup>1</sup> The application was denied accordingly.

In a Notice of Appeal to the AAO dated April 25, 2007, counsel states that the applicant's mother will suffer extreme hardship as a result of the applicant's inadmissibility because she is 73 years old and in ill health.

The record indicates that that the applicant entered the United States without inspection in April 1997. The applicant remained in the United States until November 1998. Therefore, the applicant accrued unlawful presence from April 1997 until November 1998. In applying for an immigrant visa, the applicant is seeking admission more than ten years after his November 1998 departure from the United States. Therefore, the applicant is no longer inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year. However, the record also indicates that on June 4, 2000 the applicant attempted to re-enter the United States by presenting a counterfeit I-551 Stamp in his Mexican passport. The applicant was removed from the United States the same day. Therefore, the applicant is inadmissible under sections 212(a)(6)(C) and 212(a)(9)(C)(i)(I) of the Act.

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

- (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.

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<sup>1</sup> The AAO notes that although the District Director's decision is dated January 6, 2007, counsel submitted evidence that the decision was not mailed until March 27, 2007.

Section 212(a)(9)(C)(i)(I) of the Act provides, 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 Attorney General has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between--

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The AAO notes that a waiver of this ground of inadmissibility is available only to individuals classified as battered spouses under the cited sections of section 204 of the INA. *See also* 8

U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

Section 212(a)(9)(C)(ii) of the Act gives the Secretary discretion to consent to the applicant's re-applying for admission. Granting consent to reapply, however, can relieve an alien of inadmissibility only if the alien is seeking admission more than ten years after the date of the applicant's last departure from the United States. The applicant last departed the United States on June 4, 2000. For this reason, granting consent to reapply would relieve him of the ground of inadmissibility under 212(a)(9)(C)(i)(I) of the Act only if he were seeking admission on June 5, 2010 or later.

Inasmuch as the applicant is inadmissible and there is no current waiver available for inadmissibility under section 212(a)(9)(C)(i)(I), no purpose would be served in discussing whether the alien is eligible for a waiver of the 212(a)(6)(C)(i) inadmissibility grounds pursuant to section 212(i) of the Act. Thus, the appeal is dismissed.

**ORDER:** The appeal is dismissed.