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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
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Services

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MAR 10 2010

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

CDJ 2004 710 422 (relates)

IN RE:

Applicant:



APPLICATION:

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:



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 or reopen, 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, 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 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 her last departure from the United States. The record indicates that the applicant is married to a United States citizen and the mother of two United States citizen children. She 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 her United States citizen husband and children.

The 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 14, 2006.

On appeal, the applicant, through counsel, claims that the waiver "should have been granted in this case." *Form I-290B*, filed December 13, 2006. Additionally, counsel states that the applicant's husband meets the extreme hardship standard. *Id.*

The record includes, but is not limited to, counsel's appeal brief; letters and declarations from the applicant's husband, stepdaughter, and children; and the applicant's marriage certificate. 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 in 1990 with a visa and remained in the United States until 2002 when she returned to Mexico. She reentered the United States illegally. *OF-194, Refusal Worksheet*, dated November 29, 2005. On August 21, 2003, the applicant's United States citizen husband filed a Form I-130 on behalf of the applicant. On July 1, 2004, the applicant's Form I-130 was approved. In November 2005, the applicant voluntarily departed the United States. On December 2, 2005, the applicant filed a Form I-601. On November 14, 2006, the District Director denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until November 2002, when she departed for the first time. She reentered the United States without inspection and remained until November 2005 when she again left the United States. As the applicant is seeking admission to the United States within ten years of her November 2005 departure, she 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 her 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 her 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) 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.