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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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HLG



FILE: [REDACTED] Office: LOS ANGELES, CA

Date: **NOV 15 2010**

IN RE: Applicant: FERNANDO SANTOS FELICIANO

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:

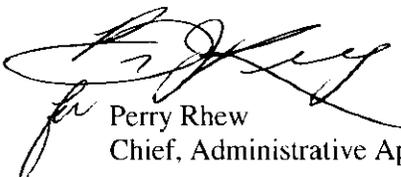


INSTRUCTIONS:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The decision 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and is seeking admission into the country within ten years of his last departure from the United States. The applicant is married to a United States citizen (USC) and 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, in order to reside in the United States with his United States citizen spouse and child.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 2, 2008.

On appeal, the applicant through counsel asserts that the Field Office Director failed to properly evaluate the evidence submitted by the applicant showing that the applicant's spouse would suffer extreme hardship if the waiver application is denied. See *Form I-290B* filed on July 1, 2008, and *accompanying brief from counsel in support of the Appeal*.

The record includes, but is not limited to, an undated declaration from the applicant's wife, copies of the applicant and his wife's U.S. Individual Income Tax Returns (Form 1040A), brief from counsel, dated June 30, 2008, a copy of detailed monthly expenses for the family, copies of bills and other financial documents, and a copy of a Form W-2, Wage and Tax Statement for 2006, for the applicant's wife. The entire record was reviewed and considered in rendering this decision on the appeal.

In the present case, the applicant states that he first entered the United States in October 1992, without being inspected and admitted or paroled. The applicant states that he left the United States on July 20, 1999, for Mexico to get married to his first wife, [REDACTED]. The record reflects that the applicant's marriage to [REDACTED] ended on May 3, 2004. On November 23, 2005, the applicant married his second wife, [REDACTED], a United States citizen, in Santa Barbara, California. On February 21, 2006, [REDACTED] filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, and on the same date, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 25, 2007, the applicant filed a Form I-601. On June 2, 2008, the Field Office Director denied the Form I-601, finding that the applicant accrued unlawful presence in the United States of more than one year and failed to demonstrate extreme hardship to a qualifying relative. The applicant timely filed this appeal.

The record reflects that on March 7, 2002, the applicant submitted a Sworn Statement in which he stated that he first entered the United States in October 1992 through Tijuana, Mexico, by climbing over the fence into the United States. The applicant stated that he left the United States for Mexico

on July 20, 1999, to get married to his wife, [REDACTED]. The applicant further stated that he reentered the United States through Tijuana, Mexico, on August 12, 1999, by crossing the border through the fence.

The applicant accumulated unlawful presence from April 1, 1997, the effective date of the Unlawful Presence Law under the Act, through July 20, 1999, when he voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States in July 1999, triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006). 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 on August 12, 1999, 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....

An alien who is inadmissible under section 212(a)(9)(C)(i)(I) of the Act may not apply for consent to reapply for admission 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. *Matter of Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007). To avoid inadmissibility under section 212(a)(9)(C) of the Act, the applicant must have departed the United States at least ten years ago, remained outside the United States during that time, and U.S. Citizenship and Immigration Services (USCIS) must consent to the applicant's reapplying for admission. *Id.* at 358, 371; *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006), *aff'd.*, *Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). The record does not reflect that the applicant in the present matter resided outside of the United States for the required ten years prior to reentry in August 1999. Accordingly, the applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such no

purpose would be served in adjudicating 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) 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.