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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

H6

FILE:

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

NOV 29 2010

IN RE:

Applicant

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tariq Syed
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, 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. He 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 one year or more and seeking admission within ten years of his last departure, and pursuant to 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 enter the United States by misrepresenting his identity. He is married to a United States citizen. He 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Acting District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 24, 2008. The applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied concurrently with his Form I-601.

On appeal, counsel for the applicant asserts that the United States Citizenship and Immigration Services (USCIS) abused its discretion when it denied the applicant's waiver application, and that the decision failed to consider all the evidence or explain why the evidence submitted failed to establish extreme hardship.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant attempted to enter the United States using another person's I-551, Resident Alien Card. He was detained and removed in a section 235(b) proceeding on July 17, 1997, and a five year bar to re-entry was imposed pursuant to section 212(a)(9)(A)(i) of the Act. *Form I-213, Record of Deportable/Inadmissible Alien*, July 17, 1997. The applicant subsequently re-entered the United States without inspection on July 24, 1997, and resided unlawfully until he was removed subject to a reinstatement order on or around May 2, 2002.

Section 212(a)(9) 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.

The applicant was removed from the United States in a section 235(b) proceeding, and then re-entered without inspection on July 24, 1997. As such, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and statutorily ineligible to file a waiver.¹

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply 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. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). 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 ten years ago, the applicant has remained outside the United States *and* CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on or about May 2, 2002, less than ten years ago. He is currently inadmissible, and is statutorily ineligible to apply for permission to reapply for admission until May 2012. *See In Re Briones*, 24 I&N Dec. 355 (BIA 2007); *see also Memorandum, Adjudicating Forms I-212 for Aliens inadmissible under section 212(a)(9)(C) or Subject to Reinstatement Under Section 240(a)(5) of the Immigration and Nationality Act in light of Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), Michael Aytes, Acting Deputy Director, May 19, 2009.

Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(II) of the Act and the AAO finds no purpose would be served in considering the merits of his Form I-601 waiver application under sections 212(a)(9)(B)(v) and 212(i) of the Act.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3^d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

The AAO also notes that the Acting District Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. As the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and statutorily ineligible to apply for readmission until May 2012, no purpose would be served in adjudicating the applicant's Form I-212.

ORDER: The appeal is dismissed.