

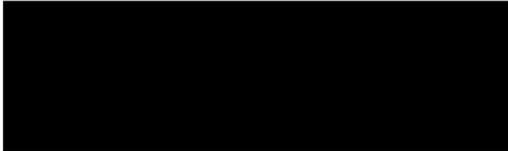
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: TEGUCIGALPA, HONDURAS

Date: OCT 04 2010

IN RE: Applicant: [REDACTED]

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, 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras. 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 Honduras 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 reentry into the country within ten years of her 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 her United States citizen spouse and child.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 14, 2008.

On appeal, the applicant through counsel asserts that the director abused his discretion in denying the applicant's waiver request because the evidence in the record "amply demonstrated" the extreme hardship that the applicant's qualifying relative has suffered as a result of family separation." See *Form I-290B* filed on April 17, 2008, and *accompanying brief from Counsel in support of Appeal*.

The record includes, but is not limited to, an undated statement from the applicant's husband, a copy of the U.S. Department of State Country Reports on Human Rights Practices in Honduras for 2007, a copy of a letter addressed to "To Whom it May Concern" from [REDACTED], Clinical Coordinator Families Program, [REDACTED] a copy of an undated and unsigned statement from the applicant, and a copy of a statement from [REDACTED], dated March 28, 2008, regarding the applicant's daughter. The entire record was reviewed and considered in rendering this decision on the appeal.

In the present case, the applicant stated that she entered the United States on October 27, 2002, without being inspected and admitted or paroled. On April 23, 2004, the applicant married her United States citizen husband in [REDACTED]. On April 18, 2005, the applicant's United States citizen husband 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 July 20, 2005, the Director, Lee's Summit, Missouri, denied the Form I-485 application, finding that the applicant had not established eligibility for the benefit sought. On November 30, 2006, the Form I-130 was approved. On August 17, 2007, the applicant voluntarily left the United States for Honduras. On August 29, 2007, the applicant filed a Form I-601 and on March 14, 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 her qualifying relative. The applicant timely filed an appeal. While the appeal was pending, the applicant illegally reentered the United States on January 23,

2009 near the Hidalgo, Texas port of entry. The applicant was placed in Expedited Removal proceedings, detained and was subsequently removed from the United States on February 4, 2009, pursuant to section 235(b)(1) of the Act.

The applicant accumulated unlawful presence from October 27, 2002 until August 17, 2007, when she voluntarily departed the United States. The applicant's unlawful presence for one year or more and departure from the United States in August 2007, 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 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 January 23, 2009, 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 has resided outside of the United States for the required ten years. Accordingly, the applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such no purpose would be served in

adjudicating 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.