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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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FILE:  Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: OCT 15 2010

IN RE: Applicant: 

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

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tariq Syed*  
for  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting District Director, Mexico City, Mexico and 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 is 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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Acting District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Acting District Director*, dated April 28, 2008.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application. *Form I-290B, Notice of Appeal or Motion*.

The record reflects that the applicant entered the United States without inspection on March 7, 1993 in Texas. *Form I-213, Record of Deportable Alien*, dated March 7, 1993. He was arrested by immigration officials and placed into proceedings. *Id.* On March 31, 1993 an immigration judge ordered the applicant deported from the United States. *Order of the Immigration Judge*, dated March 31, 1993. On April 16, 1993 the applicant was removed to Mexico. *Form I-213, Record of Deportable/Inadmissible Alien*, dated January 6, 2005. In 1998 the applicant entered the United States without inspection in Texas. *Record of Sworn Statement in Affidavit Form*, dated January 6, 2005. On January 6, 2005 the applicant presented himself to immigration officials in Atlanta, Georgia to check on his immigration status. *Form I-213, Record of Deportable/Inadmissible Alien*, dated January 6, 2005. Immigration officials determined that the applicant was a re-entry after removal and a removal order was reinstated in 2005. *Id.*; *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated April 30, 2007. The applicant departed the United States in February 2005. *Form I-601, Application for Waiver of Grounds of Inadmissibility*. The applicant accrued unlawful presence from 1998 until he departed the United States in February 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his February 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under 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)(II) of the Act for having been ordered removed and reentering the United States without being admitted. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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)(II) 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 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 section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed. On April 16, 2008 the Form I-212 was denied. *Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal*. As the Form I-601 waiver application is being denied, there is no purpose in adjudicating the Form I-212.

**ORDER:** The appeal is dismissed.