

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: SEP 08 2010

IN RE: MARTHA LOZANO DE GARCIA

PETITION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[REDACTED]

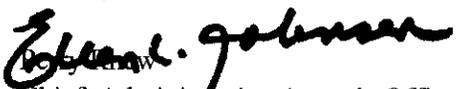
WICHITA, KS 67202-4816

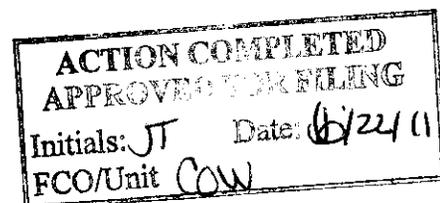
INSTRUCTIONS:

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,


Chief, Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Mexico, was found inadmissible to the United States under 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. The AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry to the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated April 15, 2008.

In support of the appeal, counsel for the applicant submits a letter, dated June 10, 2008, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

Aliens Unlawfully Present.-

(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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to such immigrant alien would

result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Regarding the acting district director's finding of inadmissibility under section 212(a)(9)(B)(II) of the Act, for unlawful presence, the record indicates that the applicant entered the United States without authorization in 1990 and did not depart the United States until 2003. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in 2003. The acting district director correctly found the applicant to be inadmissible to the United States under section 212(a)(9)(B)(II) of the Act, for unlawful presence for more than one year. On appeal, the applicant does not contest this finding of inadmissibility.

Regarding AAO's finding that the applicant is also inadmissible under 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that in November 2009, the applicant attempted to procure entry to the United States by presenting a fraudulent document, namely, a Border Crossing Card issued to another individual. *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated November 12, 2009. The applicant is thus also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for attempting to procure entry to the United States by fraud or willful misrepresentation.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative, in this case, the applicant's lawful permanent resident spouse.

Pursuant to the applicant's sworn testimony, her lawful permanent resident spouse died in October 2009 in Mexico. *Supra* at 2. The AAO thus concludes that the applicant has not established that a qualifying relative for purposes of a Form I-601 waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act exists at this time, namely, a U.S. citizen or lawful permanent resident spouse and/or parent. As such, the instant appeal is dismissed.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.