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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: **AUG 11 2011**

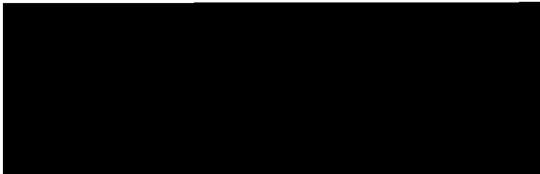
Office: HARLINGEN, TX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 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 \$630. 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 District Director, Harlingen, Texas, and the Field Office Director denied a subsequent Motion to Reopen. The matter 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)(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 through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the son of a Lawful Permanent Resident of the United States and the father of two U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

The District Director found that the applicant had failed to establish that he had a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 3, 2007. The applicant filed a Motion to Reopen or Reconsider, which was denied by the Field Office Director, Harlingen, Texas, on July 17, 2007.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) failed to consider the submitted medical documentation, which indicates that the applicant's mother suffers from a debilitating medical condition and that she relies heavily on the applicant for support. Counsel further asserts that USCIS failed to adequately balance the hardship factors as required by the Board of Immigration Appeals and USCIS policy guidelines. *See Letters from Counsel*, dated August 16, 2007.

The record includes, but is not limited to, statements from the applicant, his children, his mother and his friends, a Multi-Axial Psychological Assessment Report on the applicant's mother by Dr. [REDACTED] Licensed Psychologist, and copies of medical progress notes and diagnostic tests relating to the applicant's mother, dated from 2003 to 2005. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.

....

The record reflects that on August 21, 2000, the applicant attempted to procure a nonimmigrant visa at the U.S. Consulate in Monterrey, Mexico, by presenting fraudulent documents in support of the visa application. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having attempted to procure an immigration benefit through fraud or the willful misrepresentation of a material fact.

Beyond the decision of the Field Office Director, the AAO also finds the applicant to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) and section 212(a)(9)(C)(i)(I) of the Act¹

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

(B) 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.

The record also reflects that on August 21, 2000, the applicant stated to the consular officer in Monterrey, Mexico, that he had been living illegally in the United States since 1980. The consular officer found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accumulated more than one year of unlawful presence in the United States prior to departure to Mexico.

Section 212(a)(9)(C) of the Act, provides:

(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,

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 . .

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 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

. the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

The AAO notes that the applicant indicated on his Form I-485, Application to Register Permanent Resident or Adjust Status that he last entered the United States without inspection in 2000. In that the applicant reentered the United States without inspection after having accrued unlawful presence of one year or more, he is inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must remain outside the United States for at least ten years following his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record in the present matter does not establish that the applicant has resided outside 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) of the Act.

As the applicant is not eligible to receive an exception from his section 212(a)(9)(C)(i) inadmissibility, the AAO finds no purpose would be served in considering whether he is eligible for waivers of inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(v) of the Act. The appeal will therefore be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.