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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: DEC 08 2011

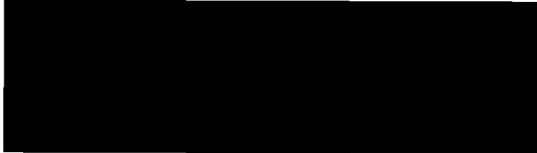
Office: SAN BERNARDINO, CA

FILE: 

IN RE: 

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:

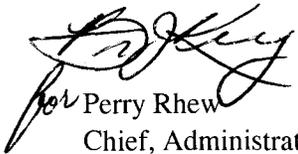


INSTRUCTIONS:

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 \$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 Field Office Director, San Bernardino, California. 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 Mexico who was found to be inadmissible to the United States pursuant to 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 record indicates that the applicant is the son of Lawful Permanent Residents of the United States and the father of three U.S. citizens. The applicant 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), in order to reside in the United States with his family.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated May 22, 2009.

On appeal, counsel asserts that the applicant's parents and children will suffer extreme hardship if his waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated June 15, 2009; *see also Counsel's brief*.

The record includes, but is not limited to, counsel's briefs; statements from the applicant, his parents and two of his children; school records relating to the applicant's children; statements from the applicant's friends, acquaintances, and his current and former pastors; a medical statement relating to the applicant's father; a psychological evaluation of the applicant's father; information on the prescription drugs being taken by the applicant's father; copies of tax returns and W-2 Wage and Tax Statements; and a statement from the applicant's employer. The entire record was reviewed and all relevant documents considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) states 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 reflects that the applicant entered the United States without inspection in January 1994. On May 28, 1997, the applicant was apprehended at his place of employment and placed in removal proceedings. On December 11, 1998, an immigration judge granted him voluntary departure to Mexico

valid until April 12, 1999. On April 6, 1999, the applicant departed the United States pursuant to the voluntary departure order.

Based on this history, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until April 6, 1999, when he departed the United States and triggered the ten-year bar to inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Beyond the decision of the Field Office Director, the AAO also finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act.<sup>1</sup> On his Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant indicates that he last entered the United States in March 2006 without inspection. As the applicant reentered the United States without inspection after having accrued unlawful presence of more than one year, he is inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act.

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 . . . 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)(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,

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<sup>1</sup> 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 (9<sup>th</sup> 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 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 a waiver of inadmissibility under section 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal will be dismissed.