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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

[redacted]

H6

FILE: [redacted] Office: CIUDAD JUAREZ (MEXICO CITY) Date: FEB 10 2011

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 Officer in Charge, Ciudad Juarez, Mexico. The matter 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 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 a period of one year or more and seeking readmission within 10 years of her departure. The alien is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud or willful misrepresentation using a visa in a name other than her own. The applicant's husband is a U.S. citizen and the applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and § 1182(i), in order to reside in the United States with her family.

In a decision dated September 14, 2006, the Officer in Charge found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her continued inadmissibility. The application was denied accordingly. *See Decision of the Officer in Charge* dated September 14, 2006.

On appeal, the applicant's attorney provided a statement in support of the appeal. In the statement, the applicant's attorney asserts that the qualifying spouse would experience medical and personal hardships as a result of the applicant's inadmissibility.

The record contains an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal to the AAO (Form I-290B), an addendum to the Form I-290B, an affidavit from the qualifying spouse, a statement from the applicant's daughter, a letter from the qualifying spouse's doctor, medical documentation regarding the qualifying spouse's medical conditions, the qualifying spouse's ministerial credential card, birth certificates of the applicant's children, the qualifying spouse's naturalization certificate, a driver's license, a marriage certificate, a letter in Spanish from the qualifying spouse, awards and school records for two of the applicant's children and a list of applicant's children.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant attempted to enter the United States on May 22, 2008 using a laser visa with a name other than her own, was processed for expedited removal and returned to Mexico. The applicant subsequently entered the United States without inspection on April 18, 2009 and her prior order of removal was reinstated. The record indicates that the applicant also accrued unlawful presence prior to her aforementioned entries when she lived in the United States without status from September 1991 to November 2005. She thus accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions of the Act, until November 2005 when she voluntarily departed the United States. As a result of her prior misrepresentations and unlawful presence, the applicant is inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the

initial decision. *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).

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-
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> (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, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—
>
> (1) the alien's having been battered or subjected to extreme cruelty; and
>
> (2) the alien's--
>
> (A) removal;
>
> (B) departure from the United States;
>
> (C) reentry or reentries into the United States; or
>
> (D) attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C) 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 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). In the present matter, the applicant was removed from the United States on May 22, 2008 and she re-entered the United States without inspection and was again removed on April 24, 2009 after her prior removal order was reinstated. The applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having reentered the United States without being admitted after having been ordered removed under section 235(b)(1) of the Act. Since she has not been outside the United States for 10 years since her last departure, she is statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in considering the merits of her Form I-601 waiver application under sections 212(a)(9)(B)(v) and 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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 because she is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C) of the Act even if a waiver under sections 212(a)(9)(B)(v) and 212(i) were granted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.