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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**

H6

[REDACTED]

FILE: [REDACTED]

Office: ST. ALBANS, VERMONT

Date: FEB 18 2011

IN RE: Applicant: [REDACTED]

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:

[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 Field Office Director, St. Albans, Vermont, and 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 and seeking readmission within ten years of her last departure from the United States. The applicant is the mother of two United States citizen children and two Mexican citizen children. 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 her children.

The Field Office Director found that the applicant had failed to establish that she had a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 8, 2008.

On appeal, the applicant, through counsel, claims that the applicant's "visa was approved and because of a [sic] UNAVAILABILITY of Visa Numbers; she couldn't get her VISA in 2005." *Form I-290B*, filed November 6, 2008.

The record includes, but is not limited to, birth certificates for the applicant's two United States citizen children, bank statements, and a divorce decree for the applicant and her ex-husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present case, the record indicates that in 1993, the applicant entered the United States without inspection. In June 2000, the applicant departed the United States. In June 2000, the applicant entered the United States without inspection.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until June 2000, when she departed the United States. The AAO notes that the applicant's departure from the United States occurred more than ten years ago; however, she has not remained outside the United States for the statutory ten-year period. Accordingly, the AAO finds that the applicant is inadmissible 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. Based on her reentry in June 2000 without inspection, the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted.<sup>1</sup>

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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 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 (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).

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)(I) 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 since her last departure in June 2000. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and the AAO finds no purpose would be served in considering the merits of her Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.