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

U.S. Citizenship and Immigration Services

[redacted]

H6

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JAN 05 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Ground 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: SELF-REPRESENTED

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, 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 married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 USC husband and children.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 17, 2008. On appeal, the applicant's spouse asserts that he is suffering extreme hardship due to separation from his family and the denial of the applicant's waiver request. *See Form I-290B, Notice of Appeal*, dated August 14, 2008.

The record includes, but is not limited to, several undated statements from the applicant's husband, and supportive letters from family and friends, including the applicant's pastor. The entire record was reviewed and considered in rendering this decision on appeal.

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.
> >
> > . . . .
>
> (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 [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.

In the present case, the applicant claims that she entered the United States without being inspected and admitted or paroled in January 2000. On June 24, 2003, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf. On March 15, 2005, the Form I-130 was approved. In July 2006, the applicant voluntarily departed the United States. On September 13, 2007, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, by a U.S. Consular Officer in Mexico. She was refused an immigrant visa. On September 27, 2007, the applicant filed a Form I-601. On July 17, 2008, the acting district director denied the Form I-601, finding that the applicant failed to establish extreme hardship to a qualifying relative. The applicant accrued unlawful presence from January 2000, when she illegally entered the United States until July 2006, when she voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

On August 18, 2010, the AAO received a letter from the applicant's spouse, [redacted] stated that the applicant walked across the border into the United States with a fake "I.D.", and that he does not want to be part of making the applicant a U.S. citizen. [redacted] requested that his name be withdrawn from the applicant's application. It appears that the applicant re-entered the United States following her departure from the United States to Mexico in 2006, without being inspected and admitted or paroled. Although it is unclear when the applicant re-entered the United States, the AAO notes that she must have re-entered sometime in 2010. Therefore, 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.

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....

An alien who is inadmissible under section 212(a)(9)(C)(i)(I) 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 U.S. Citizenship and Immigration Services (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). The record does not reflect that the applicant in the present matter resided outside of the United States for the required ten years prior to reentry in 2010. Accordingly, the applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such no purpose would be served in adjudicating her Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act.

In addition, the letter from [redacted] the applicant's USC spouse, dated August 18, 2010, stated "I do not want to be a part of making [the applicant] a U.S. citizen. Please withdraw my name from her application." Based on [redacted] withdrawal, it appears that the applicant no longer has a qualifying relative (a U.S. citizen or permanent resident spouse or parent). Therefore, she is no longer eligible for consideration for a waiver under section 212(a)((9)(B)(v) of the Act. The appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.