

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



H6

DATE: JUL 06 2011 Office: DETROIT, MI File: [REDACTED]

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 (the Act), 8 U.S.C. section 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 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, Detroit, Michigan, 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for one year or more and subsequently re-entering the United States without admission. He 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).

The Field Office Director concluded that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i) and denied his application as a matter of law. Decision of the Director, December 18, 2008.

On appeal, the asserts states that he entered the United States lawfully in 2002, that he was unaware that he was not allowed to leave the country, and that his employer advised him to return to Mexico for a visa interview. *Form I-290B*, received January 9, 2008.

The record indicates that the applicant entered the United States without inspection in 1995 and remained until 1997. The applicant entered the United States without inspection in March 1998, and remained until December 1999. The applicant again re-entered the United States without inspection in March 2000, and remained until March 2002. The applicant entered under H2 visas in May 2002 and April 2003, and has remained beyond his authorized period of stay. The applicant filed a Form I-485 on December 14, 2007. The applicant therefore accrued unlawful presence for a period of more than one year from March 1998 until December 1999. His re-entry without inspection into the United States in March 2000 rendered him inadmissible pursuant to section 212(a)(9)(C)(i)(I).

Section 212(a)(9) 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, 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.

An alien who is inadmissible under section 212(a)(9)(C) of the Act is permanently inadmissible and there is no waiver for this ground of inadmissibility. An alien who is inadmissible under 212(a)(9)(C) may seek an exception from a finding of inadmissibility by filing for permission to reapply for admission (form I-212). However, consent to reapply can only be granted if 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. Section 212(a)(9)(C)(i)(I); *See also Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006)(interpreting the provision at section 212(a)(9)(C)(i)(I). The record reflects that the applicant in the present matter has not met these requirements.

As the applicant is statutorily ineligible to file a waiver application, the appeal will be dismissed as a matter of law.

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 rests 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.