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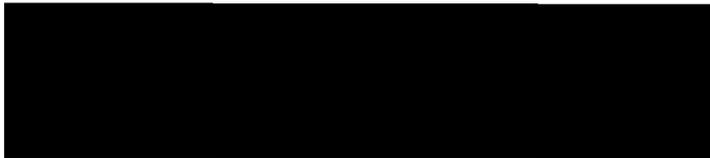
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: JUL 13 2011 Office: CIUDAD JUAREZ, MEXICO

FILE:



IN RE: Applicant:



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: 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 Field Office Director, Ciudad Juarez, 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 admission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a lawful permanent resident of the United States and she 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 lawful permanent resident husband.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 10, 2009.

On appeal, the applicant asserts that she is suffering extreme hardship and requests that her application be approved. The applicant also states that she cannot address the grounds of inadmissibility because she has not been provided with those grounds. She contends that the director sent her the denial notice for another individual. It is noted that the applicant indicates on the Notice of Appeal or Motion that a brief and/or additional evidence will be submitted within 30 days. *Form I-290B*, filed March 31, 2009. However, the record does not reflect the receipt of additional evidence. Therefore, the record is considered to be complete.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 at the time of her consular interview, the applicant testified that she had resided in the United States from February 1998 to 1999 and from July 2000 to September 2005. It also indicates that the applicant entered the United States on both occasions using a DSP-150, B1/B2 Visa

and Border Crossing card, although it fails to document the length of time she was authorized to remain in the United States following these admissions.

Without evidence of the date on which the applicant's visa expired and the date on which she departed the United States in 1999, the AAO is unable to determine whether she accrued more than 180 days of unlawful presence during her February 1998 to 1999 residence in the United States. However, following her July 2000 entry, the applicant did not depart the United States until September 2005, a period of time well in excess of the year limit on a single B-1/B-2 admission. Accordingly, the AAO finds the applicant to have accrued more than a year of unlawful presence in the United States prior to her September 2005 departure. As she is now seeking admission to the United States within ten years of that departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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) 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.

The record reflects that on or about October 20, 2005, the applicant entered the United States without inspection. The applicant is, therefore, also inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act for having entered the United States without inspection after accruing more than a year of unlawful presence.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). In the present matter, the record fails to indicate that the applicant has resided outside the United States for the required ten years. Therefore, she is currently statutorily ineligible to apply for permission to reapply for admission.

Accordingly, the AAO finds that no purpose would be served in adjudicating her waiver under section 212(a)(9)(B)(v) of the Act. In light of the applicant's statutory inadmissibility under section 212(a)(9)(C) of the Act, we also note that any failure on the part of the director to transmit the correct denial notice to the applicant has not prejudiced the outcome of the appeal.

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. *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.