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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

PUBLIC COPY

H6

DATE: JUL 14 2011 Office: HARLINGEN, TEXAS 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, 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, Harlingen, Texas, 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 ten years of her last departure from the United States. The record indicates that the applicant is married to a United States Lawful Permanent Resident (LPR) 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 LPR spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 11, 2009.

On appeal, the applicant's accredited representative asserts that the denial of the applicant's waiver application would result in extreme hardship to her spouse. *See Form I-290B*, dated March 31, 2009, and the accompanying statements and other documents submitted with the appeal.

The record includes, but is not limited to, statements from the applicant's spouse, copies of tax and other financial documents, a copy of a psychological evaluation of the applicant's spouse, copies of medical records for the applicant's spouse and her children, and copies of country condition information on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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.
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- (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 indicated that she arrived in the United States on January 9, 2001 and was admitted as a visitor, with authorization to remain in the United States until July 9, 2001.¹ In a Sworn Statement dated August 22, 2008, the applicant testified that she had been living in the United States since August 2000. She further testified that, on January 2, 2007, she was refused entry into the United States and her Border Crossing Card was cancelled. The applicant voluntarily returned to Mexico. The applicant stated that she reentered the United States during the same month without being inspected and admitted or paroled. On April 28, 2001, the applicant's United States citizen spouse filed a Form I-130 on the applicant's behalf, which was approved on March 24, 2006. On February 3, 2008, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. On September 23, 2008, the applicant filed a Form I-601 waiver application. On March 11, 2009, the Field Office Director denied the Form I-601, finding that the applicant had accrued unlawful presence for more than one year and had failed to establish extreme hardship to a qualifying relative.

The AAO notes that based on the applicant's statements, she also appears inadmissible under section 212(a)(6)(C)(i) of the Act since she used a non-immigrant document to return to the United States in January 2001, to resume her residence and tried to do so in January 2007, when she was refused admission.

The applicant accrued unlawful presence from July 10, 2001, the day after her authorized stay in the United States expired, until she departed the United States sometime prior to January 2, 2007, the date she attempted to return. She reentered the United States shortly thereafter in January 2007, without being inspected and admitted or paroled. The applicant's accrued unlawful presence for more than one year, from 2001 through 2007, and her 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.

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.

¹ See Petition for Alien Relative (Form I-130) in the file.

- (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. . . .

In that the applicant returned to the United States without being inspected and admitted or paroled, after having been unlawfully present in the United States for an aggregate period of more than one year, she is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act.

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 ten 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, an applicant must have departed the United States at least ten years previously, remained outside the United States during that time, and must have been granted permission to reapply for admission by U.S. Citizenship and Immigration Services (USCIS). *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 has resided outside the United States for the required ten years. Accordingly, the applicant is currently statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i)(I) of the Act. As such, 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.

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.