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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

DATE: **JUN 24 2011** Office: MEXICO CITY, MEXICO 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:

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,

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 his last departure from the United States. The applicant's spouse and child are U.S. citizens. 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 his family.

The acting district director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 11, 2008.

On appeal, the applicant states that his spouse's family has experienced extreme hardship. *Form I-290B*, dated August 8, 2008.

The record reflects that the applicant entered the United States without inspection in June 1999 and departed the United States in January 2007. The applicant accrued unlawful presence during this entire period of time. Based on his accrual of more than one year of unlawful presence and subsequent departure from the United States, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act which 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.

In addition 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....

The record reflects that the applicant entered the United States without inspection on May 30, 2007, he received an expedited removal order on the same date, he subsequently entered the United States without inspection on July 16, 2007, his removal order was reinstated on July 18, 2007 and he was removed on August 24, 2007. The AAO finds that the applicant is 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 more than one year and reentering the United States without being admitted, and section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed under section 235(b)(1) of the Act and reentering the United States without being admitted. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office 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 (9th 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).

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and section 212(a)(9)(C)(i)(II) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, consent to reapply under section 212(a)(9)(C)(ii) of the Act can only be granted to one who has left the United States, is currently abroad and is seeking admission to the United States at least ten years after the date of his or her last departure. *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 met these requirements. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and section 212(a)(9)(C)(i)(II) of the Act, and the AAO therefore finds no purpose would be served in considering the merits of his 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.