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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

46

DATE: **JUN 28 2011**

Office: LIMA, PERU

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)

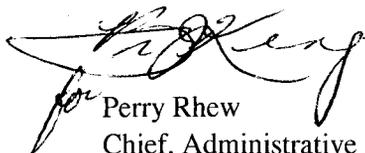
ON BEHALF OF APPLICANT:

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, Lima, Peru. The decision 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 Peru who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and is seeking reentry into the country 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, in order to reside in the United States with her United States citizen spouse and children.

The Field Office Director found that the applicant is statutorily ineligible for a waiver at this time under section 212(a)(9)(C)(i)(I) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 23, 2008.

On appeal, the applicant's spouse states that denial of the applicant's waiver request will result in extreme hardship to him and his children. See *Form I-290B* dated January 22, 2009 and the accompanying statement in support of the appeal, dated January 22, 2009.

The record includes, but is not limited to, a statement from the applicant's spouse, copies of financial and tax documents, psychological evaluation report of the applicant's spouse, copies of the applicant's spouse's medical records, supportive statements from family and friends, and copies of country condition information on Peru. The entire record was reviewed and considered in rendering this decision on the appeal.

In the present case, the applicant stated that she first entered the United States with her elder daughter in August 2002, without being inspected and admitted or paroled. The applicant voluntarily left the United States in April 2004. In June 2004, the applicant reentered the United States with her younger daughter without being inspected and admitted or paroled. On November 3, 2006, the applicant married her United States citizen spouse in Fairfax, Virginia. On November 24, 2006, the applicant's United States citizen spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on April 17, 2007. On April 29, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), which was denied on June 28, 2007. In June 2008, the applicant voluntarily left the United States for Peru to apply for an immigrant visa. The applicant was found inadmissible under section 212(a)(6)(E) and section 212(a)(9)(B)(i)(II) of the Act. On September 29, 2008, the applicant filed a Form I-601 application and on December 23, 2008, the Field Office Director denied the Form I-601 application, finding that the applicant is statutorily ineligible for a waiver under section 212(a)(9)(C)(i)(I) of the Act and denied the Form I-601 application.

The applicant accrued unlawful presence from August 2002 to April 2004, when she voluntarily left the United States; from June 2004 until April 29, 2007, the date of the proper filing of a Form I-485; and

from June 28, 2007, the date of the denial of the Form I-485 until June 2008, when she voluntarily departed the United States. The applicant's unlawful presence of one year or more and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. 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 in June 2004, without being inspected and admitted or paroled.

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 applicant in this case has not resided outside of the United States for the required ten years. Accordingly, the applicant is currently statutorily ineligible for permission to reapply for admission into the United States.

The AAO notes that the Field Office Director also found the applicant inadmissible under section 212(a)(6)(C)(E) of the Act, for alien smuggling. The director noted that the applicant smuggled her first daughter into the United States in December 2002 and her second daughter in April 2004.

The AAO also notes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a non-immigrant visa to the United States through fraud or the willful

misrepresentation of a material fact. The record reflects that a Consular Officer revoked the visa issued to the applicant in November 2000, because the applicant submitted fraudulent employment documentation in support of non-immigrant visa applications for her children. Although waivers are available for these inadmissibility grounds, no purpose would be served in reviewing her eligibility for the waivers because the applicant is inadmissible under section 212(a)(9)(C) 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.