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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

MAR 02 2011

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA  
(SANTA ANA, CALIFORNIA)

Date:

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 District Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the matter will be reopened, and the previous decisions of the District Director and the AAO will be affirmed.

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 her last departure from the United States. The applicant is married to a United States citizen and 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 United States citizen spouse.

The record indicates that the District Director issued the decision on December 28, 2005, finding 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 District Director*, dated December 28, 2005. On January 26, 2006, the applicant, through counsel, submitted an appeal to the AAO. On July 24, 2008, the AAO dismissed the applicant's appeal. The applicant, through counsel, subsequently submitted the present motion to reopen to the AAO.

In the present motion to reopen, the applicant, through counsel, claims that she has presented evidence of extreme hardship to her husband. *Motion to reopen*, dated August 21, 2008.

The record includes, but is not limited to, statements from the applicant and her husband, a letter from [REDACTED] regarding the applicant's medical condition, a letter from the applicant's husband's employer, and tax documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present case, the record indicates that in 1982, the applicant entered the United States without inspection. She departed the United States on an unknown date in 2002. On August 16, 19, 21, and 24, 2002, the applicant attempted to enter the United States without inspection. On or about August 29, 2002, the applicant entered the United States without inspection.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until 2002 when the applicant voluntarily departed the United States. As the applicant is seeking admission to the United States within ten years of her 2002 departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Based on her reentry on or about August 29, 2002 without inspection, 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 without being admitted.<sup>1</sup>

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....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, only those individuals who have remained outside the United States for at least ten years since their last departure are eligible for consideration. *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 resided outside of the United States for the required ten years since her last departure in 2002. Accordingly, the applicant is statutorily ineligible to seek an exception from her inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and the AAO finds 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 previous decisions of the District Director and the AAO will be affirmed.

**ORDER:** The motion is granted, and the previous decisions of the District Director and the AAO are affirmed.

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center 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 (9<sup>th</sup> 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).