

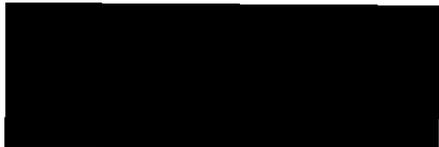
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **NOV 14 2011** Office: TEGUCIGALPA, HONDURAS

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 (the Act), 8 U.S.C. section 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 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, Tegucigalpa, Honduras. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Honduras. He 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 one year or more and seeking admission within ten years of her last departure. He is the son of a United States citizen. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen parent, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 16, 2009.

The applicant filed an appeal, which is now before the AAO.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

The record indicates that the applicant entered the United States without inspection on October 23, 2004. He was entered into removal proceedings and given voluntary departure on July 2, 2007. The applicant departed sometime prior to October 30, 2007. Therefore, the applicant resided unlawfully in the United States from October 23, 2004, until July 2, 2007, a period over one year. Subsequent to the filing of this appeal the applicant entered the United States on March 26, 2011, without inspection.

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) 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, 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 applicant departed the United States in October 2007, after having accrued more than one year of unlawful presence. The applicant then attempted to re-enter the United States without inspection on March 26, 2011, and was detained and removed pursuant to section 235(b)(1) of the Act. Therefore he is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

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 10 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). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States and U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on or about March 29, 2007, less than ten years ago. He is currently inadmissible, and is statutorily ineligible to apply for permission to reapply for admission. *See In Re Briones*, 24 I&N Dec. 355 (BIA 2007); *see also Memorandum, Adjudicating Forms I-212 for Aliens inadmissible under section 212(a)(9)(c) or Subject to Reinstatement Under Section 240(a)(5) of the Immigration and Nationality Act in light of Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), Michael Aytes, Acting Deputy Director, May 19, 2009. As such, no purpose would be served in adjudicating his waiver application.

As the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i) of the Act, the AAO 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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.