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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **NOV 25 2011**

Office: BALTIMORE

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and § 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

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Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who was found inadmissible to the United States pursuant to Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure an immigration benefit by misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his US Citizen spouse.¹

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *Decision of the District Director*, dated July 2, 2009.

The district director found the applicant to be inadmissible under Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure an immigration benefit by misrepresenting a material fact in connection to a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, which the applicant submitted in 1993. Section 245A(c)(5) of the Act, 8 C.F.R. Section 1255a(c)(5), provides that the information furnished pursuant to such applications is confidential, and the information may not be used except for disclosure to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution. The AAO thus finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.²

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO finds that the applicant is inadmissible to the United States pursuant to Section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been removed from the United States and re-entering the United States without having been admitted; and 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 more than one year and seeking readmission within 10 years of his last departure from the United States.

¹ The AAO notes that the applicant is the beneficiary of an approved immigrant visa petition filed by his US Citizen wife. However, the Form I-130 Petition for Alien Relative was not filed prior to April 30, 2001; it was filed on October 4, 2006. Therefore, it appears that the applicant is ineligible for Adjustment of Status under Section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i).

² The applicant does appear, however, to be inadmissible under Section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States from February 2002 to October 2, 2006, when he filed his application for Adjustment of Status. The record indicates that the applicant last entered the United States on July 23, 2008 with an Advance Parole document, and his departure from the United States in 2008 triggered his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Therefore, though the applicant does not require a waiver under section 212(i) of the Act, he does require a waiver under section 212(a)(9)(B)(v) of the Act.

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) [./././././././lpBin/lpext.dll/inserts/slb/slb-1/slb-21/slb-4591%3ff=templates&fn=document-frame.htm - slb-act235b1](#), 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.

On January 10, 1997, the applicant was ordered removed from the United States. The applicant subsequently reentered the United States without being admitted in February 2002. As such, he is inadmissible under section 212(a)(9)(C)(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 ten 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). In *Duran Gonzalez v. DHS*, 508 F.3d 1227 (9th Cir. 2007), the Ninth Circuit overturned its previous decision, *Perez Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), and deferred to the BIA's holding that section 212(a)(9)(C)(i) of the Act bars aliens subject to its provisions from receiving permission to reapply for admission prior to the expiration of the ten-year bar. 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* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant is currently residing in the United States and remained outside the United States for five years, from January 1997 to February 2002, after he was deported. He is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating a waiver application under section 212(a)(9)(B)(v) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative or whether he merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.