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

H6



DATE:
OCT 04 2011

OFFICE: CIUDAD JUAREZ

FILE:

IN RE:

APPLICANT:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF PETITIONER:

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 Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. On January 4, 2001, the applicant attempted to enter the United States using a border crossing card which did not belong to her bearing the name "[REDACTED]". The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. She was expeditiously removed on January 5, 2001 pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant re-entered the United States later in 2001. The applicant was placed into removal proceedings again in January 2005, after applying for immigration benefits, and charged with being present in the United States without being admitted or paroled pursuant to section 212(a)(6)(A)(i) of the Act and with seeking admission within five years of a previous order of removal pursuant to section 212(a)(9)(A)(i) of the Act. In proceedings, the applicant was found removable as charged on June 15, 2005, and after appealing the denial of voluntary departure only, her request for voluntary departure was eventually granted on January 29, 2007. The applicant left the United States pursuant to the grant of voluntary departure on May 29, 2007. As the applicant was found to have entered without inspection in 2001 and left the United States on May 29, 2007, the Field Office Director also found the applicant 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 10 years of her last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), as well as permission to reapply for admission into the United States after deportation or removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A) in order to remain in the United States with her U.S. Citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated February 24, 2009.

It is noted that former counsel for the applicant, [REDACTED] was disbarred by the Washington State Bar Association and was also suspended from practicing before the Board of Immigration Appeals, Immigration Courts, and the Department of Homeland Security on May 27, 2010. The applicant will thus be treated as self-represented and a copy of this decision will not be sent to counsel.

On appeal, former counsel for the applicant asserts the Field Office Director abused his discretion and denied the I-601 and I-212 waivers in violation of congressional intent. *I-290B basis for the appeal statement*, March 19, 2009. Former counsel explains the applicant "admitted to having an

invalid visa and intending to present it for entry into the United States.” *Id.* Lastly, former counsel submits the “USC husband will continue to [experience] very extreme hardship as long as he is separated from his wife that he loves very much.” *Id.*

The record includes, but is not limited to, birth, marriage, divorce and naturalization certificates, a declaration from the applicant’s spouse, a letter of support, verification of the applicant’s May 29, 2007 departure, and records of removal proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In the present case, the record reflects that on January 4, 2001 the applicant presented a border crossing card which did not belong to her in the name of ‘[REDACTED]’ in an attempt to procure admission to the United States. The applicant admitted under oath that she presented a document which was not legally issued to her to gain admission to the United States in order to work. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

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

....

Aliens unlawfully present after previous immigration violations.-

- (i) In general.-Any alien who-

....

(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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant was ordered removed under section 235(b)(1) of the Act on January 5, 2001. The record reflects later that year, the applicant was found to have entered the United States without inspection, and resided in the United States until she left pursuant to a grant of voluntary departure on May 29, 2007. The applicant is therefore inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. §1182(a)(9)(C). 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* CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant left the United States on May 29, 2007 and therefore, has not remained outside the United States for 10 years since her last departure. She is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 212(i) and 212(a)(9)(B)(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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 the burden of proof for eligibility.

The AAO notes that the field office director also denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under sections 212(a)(9)(C)(i)(II) and 212(i) of the Act no purpose would be served in granting the applicant's Form I-212 Application.

ORDER: The appeal is dismissed.