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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy
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U.S. Citizenship and Immigration Services

[redacted]

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DATE: OCT 17 2011 Office: EL PASO, TX FILE: [redacted]

IN RE: [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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, El Paso, Texas. 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 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 admission within ten years of his last departure from the United States. The record indicates that the applicant is the son of a Lawful Permanent Resident of the United States and is the father of three U.S. citizens. 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 his family.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated March 2, 2009.

On appeal, counsel asserts that the information previously provided to the United States Citizenship and Immigration Services (USCIS) demonstrated that the applicant's father would suffer the requisite hardship required under the Act. Counsel further asserts that the USCIS did not fully take into consideration the totality of the facts before it. *Form I-290B, Notice of Appeal or Motion,* dated April 1, 2009; *see also Counsel's brief,* dated April 30, 2009.

On September 20, 2011, the AAO issued a Notice of Intent to Dismiss (NOID) the applicant's appeal of the denial of his waiver application based on his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act. The applicant was granted thirty (30) days to submit a rebuttal. As of the date of this decision, no response has been received. The AAO will consider the record as complete and will decide this matter based on the evidence in the record.

The record includes, but is not limited to, statements from the applicant and his father; counsel's brief in support of the appeal; statements from friends and co-workers of the applicant and his father; a statement from [redacted], dated March 18, 2009, regarding the applicant's father; income tax returns and a W-2 Wage and Tax Statement; and a letter from the applicant's father's former employer. The entire record was reviewed and all relevant documents considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (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 includes a Form I-213, Record of Deportable/Inadmissible Alien prepared on September 4, 2007. It indicates that the applicant was apprehended on the same date by Border Patrol Agents near Las Cruces, New Mexico, and returned to Mexico. It further indicates that the applicant informed the agents that he had last entered the United States on October 15, 2000, near El Paso, Texas, without inspection. Based on this history, the applicant has accrued unlawful presence in the United States of more than one year. As he is seeking admission within ten years of his 2007 departure, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Beyond the decision of the Field Office Director, the AAO also finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act[1]

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

> (C) Aliens unlawfully present after previous immigration violations.-
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> (i) In general. -Any alien who-
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> . . . .
>
> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year,
>
> 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....

As just noted the Form I-213, included in the record indicates that the applicant was apprehended on September 4, 2007 by Border Patrol Agents and that at the time of his apprehension, he indicated that he had last entered the United States without inspection on October 15, 2000. At his adjustment of status interview on December 22, 2008, the applicant testified under oath that following his September 4, 2007

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[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9th 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).

apprehension, he reentered the United States without inspection.[2] In that the record reflects that the applicant reentered the United States without inspection after having accumulated unlawful presence of more than one year, he is inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must remain outside the United States for at least ten years following his or her last departure. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record in the present matter does not establish that the applicant has resided outside the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i) of the Act.

As the applicant is not eligible to receive an exception from his section 212(a)(9)(C)(i) inadmissibility, the AAO finds no purpose would be served in considering whether he is eligible for waivers of inadmissibility under section 212(a)(9)(B)(v) of the Act. The appeal will therefore be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal will be dismissed.

[2] The record indicates that the applicant was also encountered by Border Patrol Agents on January 15, 2002, and July 1, 2003 after he had entered the United States without inspection