

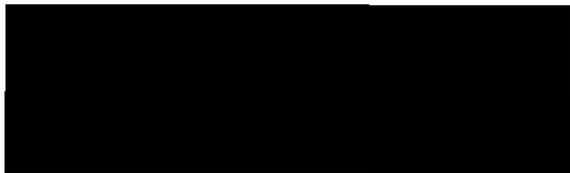
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



**U.S. Citizenship
and Immigration
Services**



H6

DATE: **OCT 21 2011** OFFICE: CIUDAD JUAREZ, MEXICO 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, 8 U.S.C. § 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 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 who was found to be inadmissible to the United States under 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 Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated January 12, 2009.

On appeal, the applicant's United States citizen spouse asserts he has experienced extreme hardships for the past two years because other individuals do not have to live in the same way. *Letter of Support from [REDACTED]*, unsigned and undated. Specifically, the hardships have resulted in him failing in many aspects, dreams, and goals that he has in life such as his plans to make a better life, home, and family. *Id.*

The record includes, but is not limited to: former Notice of Entry of Appearance as Attorney or Representative (Form G-28); Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130); letters of support from the applicant's spouse; a letter of support from the applicant; letters of support from the applicant's mother and sisters; a residential deed; residential mortgage statements; utility bills; bank account statements; payroll stubs; personal income tax returns and W-2s; credit card statements; automobile insurance statements; medical letters; medical bills; health insurance statements; an accident report; a travel alert for Mexico, issued by the U.S. Department of State Bureau of Consular Affairs; and an arrest record. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, 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.

...

(v) Waiver.-The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record reflects that on or about December 27, 1999, the applicant entered the United States without inspection by U.S. immigration officials and timely departed from the United States on or about October 10, 2006, at or near the port of entry in Calexico, California, pursuant to a voluntary departure order issued by the Immigration Judge. On or about June 13, 2006, the Immigration Judge ordered that the applicant be granted voluntary departure in lieu of removal pursuant to section 212(a)(6)(A)(i) of the Act for being present in the United States without being properly admitted or paroled by U.S. immigration officials.

At the time of the applicant's entry into the United States on or about December 27, 1999, the applicant was approximately 13 years of age. Section 212(a)(9)(B)(iii) of the Act provides, in pertinent part, that an individual does not accrue unlawful presence while under 18 years of age. The applicant did not turn 18 years of age until on or about May 23, 2004. Accordingly, the applicant accrued unlawful presence for a period in excess of one year from on or about May 23, 2004 until June 13, 2006, the date that the applicant was granted voluntary departure by the Immigration Judge. See USCIS Memorandum, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, from [REDACTED], Acting Associate Director, Domestic Operations Directorate, [REDACTED], Associate [REDACTED], dated May 6, 2009 at page 39. The applicant is now seeking admission within 10 years of her October 10, 2006 departure. Therefore, the AAO finds that the applicant is inadmissible under 212(a)(9)(B)(i)(II).

The applicant does not contest the inadmissibility finding pursuant to section 212(a)(9)(B)(i)(II) of the Act, and instead 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 remain in the United States with her U.S. Citizen spouse and their children.

Additionally, the record reflects that the applicant is further inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C) for having falsely represented herself to U.S. immigration officials that she was a U.S. citizen upon attempting to reenter the United States on or about February 17, 2008. The AAO notes, however, that the Field Office Director does not address or analyze the applicability of the applicant's particular circumstances in reference to the provisions

contained in section 212(a)(6)(C) of the Act. *Id.* The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

...

(ii) FALSELY CLAIMING CITIZENSHIP.-

(I) In General.- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

...

(II) Exception.- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien ... is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) WAIVER AUTHORIZED.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that upon attempting to reenter the United States on or about February 17, 2008, the applicant claimed to be a U.S. citizen at or near the port of entry in Presidio, Texas. In support of her claim, the applicant presented to U.S. immigration officials the birth certificate of her U.S. citizen sister, [REDACTED], born on or about "March 6, 1984," at or near Santa Ana, California. Upon obtaining a sworn statement concerning the applicant's false claim to U.S. citizenship, the U.S. immigration officials expeditiously removed the applicant pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record also reflects that the applicant has remained outside the United States since her expedited removal on or about February 18, 2008.

Based on the applicant's false claim to U.S. citizenship, the AAO finds the applicant is inadmissible under 212(a)(6)(C)(ii). Further, the AAO finds the applicant knew that she was not a U.S. citizen at the time of seeking entry into the United States on or about February 17, 2008, and therefore, the exception does not apply. Finally, the AAO finds that a waiver is not authorized for a determination of inadmissibility pursuant to the provisions of section 212(a)(6)(C)(ii) of the Act.

As the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, she is currently statutorily ineligible to apply for a waiver of grounds of inadmissibility. As such, no purpose would be served

in adjudicating her waiver under section 212(a)(9)(B)(v) or any other applicable inadmissibility provisions of the Act.

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. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that she has not shown that a purpose would be served in adjudicating her waiver under section 212(a)(9)(B)(v) of the Act due to her inadmissibility under section 212(a)(6)(C)(ii) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.