



U.S. Citizenship
and Immigration
Services



H6

DATE: **DEC 08 2012** OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen..

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Nebraska Service Center Director, Lincoln, Nebraska, and 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 Mexico who was found to be inadmissible to the United States under 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 admission within ten years of her last departure. The applicant is the spouse of a legal permanent resident of the United States and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 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 her spouse and child.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Service Center Director's Decision*, dated November 14, 2011.

On appeal, the applicant's spouse states that he is experiencing extreme hardship and submits additional evidence for consideration. *See Form I-290B, Notice of Appeal or Motion*, dated December 9, 2011.

The evidence of record includes statements from the applicant's spouse and friends, psychological evaluations for the applicant's spouse and child, and country-conditions information for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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 reflects that the applicant attempted to enter the United States without inspection on January 26, 2005. After being apprehended, the applicant voluntarily returned to Mexico. After her return to Mexico, in either January or February 2005, the applicant entered the United States

without inspection and remained in the United States for more than one year.¹ The record further indicates that the applicant applied for a border crossing card at the U.S. Consulate in Guadalajara, Mexico and was denied on March 2, 2008. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence of more than one year after her 2005 entry and triggered the ten-year bar when she voluntarily departed the United States for her nonimmigrant-visa interview in Mexico in 2008. The record indicates that the applicant reentered the United States without inspection after her nonimmigrant visa application was denied, and remained in the United States until December 2010, when she voluntarily departed the United States.

Section 212(a)(9)(C) 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,

....

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 Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Based on the applicant's history, the AAO also finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act for having accrued unlawful presence for more than one year after her 2005 entry and subsequently reentering the United States without being admitted after 2008, when she appeared before the U.S. Consulate in Guadalajara, Mexico.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, 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

¹ The record reflects that the applicant's daughter was born in the United States on July 30, 2006.

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 discretionary waivers of inadmissibility prior to the expiration of the ten-year bar.

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 10 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 departed the United States in December 2010 and has not remained outside the United States for 10 years after triggering the 212(a)(9)(C)(i)(I) bar. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under sections 212(a)(9)(B)(v).

ORDER: The appeal is dismissed.