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

[redacted]

DATE: DEC 3 1 2012 OFFICE: GUATEMALA CITY

[redacted]

IN RE: [redacted]

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

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, Guatemala City, Guatemala, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Guatemala who resided in the United States from July 1998, when he entered without inspection, until his departure on November 29, 2008. The applicant previously entered the United States without inspection on July 8, 1993, and returned to Guatemala in September 1997. 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 a benefit under the Act through fraud or misrepresentation. The Field Office Director also found to be inadmissible to the United States 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. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to join his U.S. Citizen spouse and child in the United States.

The Field Office Director concluded that not only was there insufficient evidence to show the qualifying relative would experience extreme hardship given the applicant's inadmissibility, but that the applicant was also inadmissible under section 212(a)(6)(B) for failure to appear at removal proceedings and section 212(a)(9)(C) for entering without inspection after previous immigration violations, and denied the application accordingly. *See Decision of Field Office Director* dated October 6, 2009. The Field Office Director further noted that the applicant and his spouse married while the applicant was still married to his first wife. *Id.*

The AAO determined that the applicant was no longer inadmissible for failure to appear at removal proceedings pursuant to section 212(a)(6) of the Act as his last departure from the United States occurred more than five years ago. *See Decision of AAO,* February 8, 2012. The AAO further found the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act for entering the United States without inspection after removal, and was consequently ineligible to apply for permission to reapply after removal until 10 years after the date of his last departure from the United States. *Id.*

On motion, the applicant submits a statement from [redacted], medical records, educational and financial documents, photocopies of passports, and photographs. In her letter, [redacted] discusses the applicant's good moral character, and claims she suffers from emotional and family-related difficulties without the applicant present. She additionally asserts she cannot live in Guatemala due to financial, medical, family-related, and practical reasons.

The record includes, but is not limited to, the documents listed above, other applications and petitions filed on behalf of the applicant, statements from the applicant and his spouse, letters from friends and family, evidence of birth, marriage, permanent residence, and citizenship, copies of photographs, medical records, paystubs, U.S. Federal Income Tax Returns, and evidence of

removal proceedings. The entire record was reviewed and considered in rendering a decision on the motion.

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), 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 record reflects the applicant was ordered removed on October 15, 1993, and subsequently entered the United States without inspection in July 1998. The applicant is therefore inadmissible under section 212(a)(9)(C) 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 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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's last departure from the United States occurred on November 29, 2008, and therefore he has not remained outside the United States for 10 years since his last departure. He is currently statutorily ineligible to apply for permission to reapply for admission.

The applicant must remain outside the United States for a period of ten years after his last departure from the United States. Once he has remained outside the United States for the requisite ten years, the applicant may then request permission to reapply for admission after deportation or removal by filing a Form I-212 . Given that the applicant must remain outside the United States

for ten years after his last departure, no purpose would be served in presently adjudicating his waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act.

In proceedings for a waiver of grounds of inadmissibility under sections 212(i) and 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, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.