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



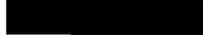
U.S. Citizenship
and Immigration
Services



H6

DATE: FEB 13 2012

OFFICE: HARLINGEN

FILE: 

IN RE: AMALIA MONREAL LOPEZ

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:



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,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Harlingen, and 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 entered the United States pursuant to a border crossing card on August 5, 1999. In February 2005 the applicant stated to a U.S. Border Patrol officer that she last entered the United States without admission or parole on February 20, 2005, but later claimed that she did not depart the United States after being admitted on August 5, 1999 and instead remained in the United States until the present date. She was found to be inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II) and 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for a period of one year or more and reentering the United States without admission or parole after unlawful presence in the United States of more than one year. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident parents.¹

The Acting Field Office Director found the applicant to be inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for reentering the United States without admission or parole after unlawful presence in the United States of more than one year. The Acting Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Acting Field Office Director*, dated July 24, 2009.

The applicant asserts that she did not depart the United States after her 1999 entry and stated to a Border Patrol officer that she had entered the United States without inspection in February 2005 because she was “under pressure” and afraid she would face more problems if she told the truth. In support of the appeal, counsel for the applicant submits briefs, affidavits from the applicant, letters from the applicant’s family members and friends, identity documents, physical presence documents, criminal records concerning the applicant, medical letters for the applicant’s father, and financial documentation. The entire record was reviewed and considered in rendering this decision.

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-

¹ The waiver sought under section 212(i) of the Act is for a ground of inadmissibility that is not identified in the Acting Field Office Director’s decision, section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact to procure a benefit provided under the Act. The AAO notes that the applicant was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and the requirements for a waiver of this ground are identical to that of a waiver under section 212(i) of the Act.

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

....

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 indicates that the applicant entered the United States pursuant to a border crossing card on August 5, 1999 and she claims to have remained in the United States since that date. See [REDACTED], dated August 6, 2009. However, the applicant stated to a U.S. border patrol agent that she last entered the United States without admission or parole on February 20, 2005. See *Form I-213*, dated February 26, 2005. The applicant submitted physical presence evidence in order to demonstrate that she has been residing in the United States since 1999. This evidence includes documents from educational, financial, and medical institutions with dates ranging from 1999 to 2006. However, this documentation indicates the applicant's presence in the United States on certain dates, but fails to establish that the applicant resided in the United States continuously from 1999 to the present.

The applicant also submitted an affidavit from herself, a letter from her parents, and letters from friends regarding the continuous presence issue. The applicant states that her last entry to the United States was on August 5, 1999 and her parents maintain that the applicant has not been in Mexico since 1999. See *Affidavit of* [REDACTED], dated August 6, 2009; *Affidavit of* [REDACTED] and [REDACTED] dated August 17, 2009.² The letters from the applicant's friends indicate that she last traveled to Mexico to visit her extended family in 1999 and that she has not left the United States since her last entry in that same year. See *Affidavit of* [REDACTED], dated August 17, 2009; *Affidavit of* [REDACTED] dated August 17, 2009. However, as noted previously, the applicant stated to a U.S. border patrol agent on February 26, 2005 that she had last entered the United States without admission or parole on February 20, 2005.

² The AAO notes that on February 15, 2001, the applicant's father filed a Form I-130 on her behalf, stating that her last entry to the United States was in 1996 rather than 1999. The applicant herself filed a sworn statement on February 15, 2001 that the last time that she entered the United States was in 1996, not 1999. See *Declaration of* [REDACTED], dated February 15, 2001. The applicant also stated on her Form G-325A, signed November 1, 2006, that she had been residing at the address of [REDACTED] from 1996 until the present. See *Form G-325A*, dated November 1, 2006.

See Form I-213, dated February 26, 2005. Further, the applicant was served a Notice to Appear on February 26, 2005, which included allegations that the applicant arrived in the United States on or about February 20, 2005 and was not admitted or paroled into the United States. *See Notice To Appear*, dated February 26, 2005. The applicant appeared before an immigration judge on April 4, 2006 and admitted the factual allegations in the Notice to Appear. As this applicant stated that she last entered the United States on February 20, 2005, both to a U.S. border patrol agent and on record to an immigration judge, and as the applicant's continuous presence evidence conflicts with other evidence in the record, the applicant has failed to satisfy her burden of proof and demonstrate that she is not subject to inadmissibility under section 212(a)(9)(C)(i)(I) of the Act. In immigration proceedings, the burden of establishing admissibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Based on the record, the applicant accrued over a year of unlawful presence in the United States, departed, then illegally entered the United States on February 20, 2005. The applicant, therefore, is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I).

An alien who is inadmissible under section 212(a)(9)(C)(i)(I) 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). 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* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant is currently residing in the United States and did not remain outside the United States for ten years after 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(a)(9)(B)(v) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether she has established extreme hardship to a qualifying relative or whether she merits a waiver as a matter of discretion. 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.