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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



U.S. Citizenship
and Immigration
Services



H6

Date: **JUL 18 2012**

Office: CIUDAD JUAREZ

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality 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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter 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 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 again seeking admission within ten years of his last departure from the United States. The applicant's spouse is his qualifying relative, and he 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 her.

The Field Office Director found that the applicant was ineligible for a waiver under section 212(a)(9)(C) of the Act, for having accrued over a year of unlawful presence in the United States and subsequently re-entering without being admitted. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of Field Office Director*, dated January 26, 2010.

On appeal, the applicant asserts that his wife and daughter are suffering medical hardships and require his presence in the United States. *See Notice of Appeal or Motion (Form I-290B)*, dated February 1, 2010.

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 applicant entered the United States without inspection in July 1998, when he was approximately ten years old. He indicated at his consular interview on August 11, 2008 that he

departed the United States in July 2007. If so, he would have accrued less than one year of unlawful presence beginning on August 9, 2006, when he became eighteen years old, until July 2007, the date he states that he departed. He subsequently was arrested for making a false report in Denver, Colorado on October 24, 2007. As such, the Field Office Director determined that the applicant's claimed departure date is inaccurate. The Field Office Director, in his decision denying the applicant's Form I-601 application, also referred to the applicant's offenses in the United States in 2008 and 2009, which occurred after his consular interview in Mexico. Based on records of these offenses, the Field Office Director determined that the applicant accrued unlawful presence for over a year after his eighteenth birthday. The applicant does not contest this finding on appeal.

Furthermore, the record reflects that the applicant re-entered the United States without admission or inspection after his August 2008 consular interview, based on evidence that the applicant was arrested in September 2008 and October 2009 in the United States. As a result of his unlawful presence and subsequent re-entry without admission, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act. The applicant does not contest his inadmissibility under this section of the Act on appeal.

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* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant has not remained outside the United States for ten years since his last departure, as his arrests place him in the United States a month after his consular interview in 2008. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(v) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.