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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

[redacted]

H6

DATE: MAY 0 2 2012 Office: MOUNT LAUREL FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mount Laurel, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without inspection in April 1995 and remained until April 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997 until his departure and was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to remain in the United States with his U.S. citizen parents. In addition, the record shows that after his April 2005 departure, the applicant reentered without inspection that same month. By virtue of this entry, the applicant is also inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for entering the United States without admission after being unlawfully present for more than one year.

The field office director concluded, after issuing a notice of intent to deny the waiver application, the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Notice and Decision of the Field Office Director,* respectively, November 2 and December 23, 2009.

On appeal, the applicant's counsel asserts that the field office director erred in not finding extreme hardship to the applicant's elderly parents based on well-established case law. In support of the appeal, counsel provides a brief highlighting the hardship contentions made in support of the waiver filing. The record also includes documents previously submitted in support of applicant's waiver request, including a brief supporting the initial waiver application and a brief responding to USCIS's notice of intent to deny the application as well as documents including copies of the following: birth, marriage, and naturalization certificates; a disability check, tax returns, and proof of unemployment compensation; supporting statements; and a medical evaluation. The entire record was considered in rendering this decision.

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

> (i) In General. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> > (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.
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> . . . .
>
> (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...

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

> (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 of Homeland Security has consented to the alien's reapplying for admission.

The applicant does not contest the record finding that he entered the United States in 1995 and left in April 2005, thereby incurring an unlawful presence inadmissibility. The AAO notes that his Application to Register Permanent Residence or Adjust Status (Form I-485) filed in 2008 establishes he reentered later in April 2005 at Nogales, Arizona without either having been paroled or lawfully admitted into the country. Besides being inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as determined by the field office director, the applicant, therefore, is also 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) of the Act may not apply for permission 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 this section, 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 present in the United States, and he must depart and remain outside the United States for ten years before he is eligible for permission to reapply. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(v) of the Act.

Having found the applicant statutorily ineligible for permission to reapply for admission at this time, no purpose would be served in discussing whether he has established extreme hardship to a

qualifying relative or whether he merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility, 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.