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: NOV 26 2012 Office: SAN SALVADOR 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 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for having participated in alien smuggling, section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking admission after previously being ordered removed, and under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for reentering the United States illegally after having been ordered removed.

The applicant subsequently filed Form I-601, Application for Waiver of Grounds of Inadmissibility, on which she indicated that she is inadmissible 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 her last departure from the United States. She therefore requested a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Her qualifying relative is her U.S. citizen mother. The applicant did not address the findings of inadmissibility under sections 212(a)(6)(E)[1] and 212(a)(9)(A)(i) of the Act in her waiver application.

On appeal, the applicant contests the finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Counsel for the applicant asserts that the Director failed to establish that the applicant was removed pursuant to the requirements of 8 C.F.R. § 241.8. In particular, counsel claims that the Director did not provide any evidence that the applicant was ever subject to a final removal order, as required by 8 C.F.R. § 241.8(a)(1), or that the applicant has been identified as the same individual who was previously removed, as required by 8 C.F.R. § 241.8(a)(2). Therefore, counsel asserts that the applicant has not been shown to have reentered after being ordered removed and cannot be found inadmissible under section 212(a)(9)(C) of the Act.

The record contains, but is not limited to: counsel's brief; a statement from the qualifying mother; and a letter from the qualifying mother's doctor. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

[1] The applicant appears to be statutorily eligible to apply for a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), because she attempted to smuggle only her daughter into the United States.

> (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.

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); *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 10 years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. The record establishes that the applicant was removed from the United States on June 19, 2007 pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). *See Form I-296, Notice to Alien Ordered Removed/Departure Verification; Form I-860, Notice and Order of Expedited Removal.* She subsequently attempted to reenter without admission on September 16, 2007. *See Form I-871, Notice of Intent/Decision to Reinstate Prior Order.* She is thus inadmissible under section 212(a)(9)(C) of the Act and is currently statutorily ineligible to apply for permission to reapply for admission because 10 years have not passed since her last departure.

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 her U.S. citizen mother or whether she merits a waiver under section 212(d)(11) or section 212(a)(9)(B)(v) of the Act as a matter of discretion. In proceedings for an application for a 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.