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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: **SEP 12 2012** Office: MEXICO CITY, MEXICO (ANAHEIM) FILE:

IN RE: Applicant:

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 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 District Director, Mexico City, Mexico, 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 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 seeking readmission within ten years of his last departure from the United States; and section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for being unlawfully present in the United States for an aggregate period of more than 1 year and attempting to reenter the United States without being admitted. The record indicates that the applicant's parents are lawful permanent residents of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 his parents.

The District Director determined that the applicant was ineligible for a waiver as a matter of discretion, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on discretionary grounds. *Decision of the District Director*, dated March 5, 2010.

On appeal, the applicant, through counsel, claims that the applicant's father will suffer extreme hardship if the applicant's waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, filed April 8, 2010. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, statements from the applicant and his parents, letters of support in English and Spanish, financial documents, country-conditions documents on Mexico, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered, with the exception of the Spanish-language statements, in arriving at a decision on the appeal.

In the present case, the record indicates that on October 5, 1998, the applicant entered the United States without inspection. On May 25, 1999, an immigration judge granted the applicant voluntary departure to depart the United States by August 23, 1999. On August 23, 1999, the applicant departed the United States. On August 30, 2001, the applicant attempted to enter the United States without inspection, but was apprehended and returned to Mexico. On December 20, 2001, the applicant attempted to enter the United States without inspection, but was apprehended and returned to Mexico. In April 2002, the applicant entered the United States without inspection, and departed in March 2006. On March 21, 2006, the applicant attempted to enter the United States without inspection, but was apprehended and returned to Mexico. On March 31, 2006, the applicant attempted to enter the United States without inspection, but was apprehended and returned to Mexico.

The AAO finds the applicant inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for being unlawfully present in the United States for more than 1 year and attempting to enter the United States without inspection. The applicant does not dispute this finding.

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.

(i) 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 . . . 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); 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's last departure from the United States occurred on March 31, 2006, 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. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.