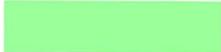


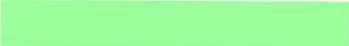
(b)(6)

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**



Date: **APR 11 2013**

Office GUATEMALA CITY FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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,


for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guatemala who entered the United States without inspection in January 1994. The applicant was ordered deported in absentia in May 1996. *See Written Decision and Order of the Immigration Judge*, dated May 16, 1996. In late March 1997, the applicant departed the United States and in April 1997, the applicant re-entered the United States without being admitted. The applicant departed the United States in May 2010. The applicant was found to be inadmissible to the United States under 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. The applicant, therefore, 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 addition, the applicant was found inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), based on the applicant's entry without being admitted after being previously removed from the United States.

The field office director concluded that there was no waiver available to the applicant based on his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act because he had not waited outside the United States for 10 years as required by law. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated July 16, 2012.

On appeal, the applicant maintains that he never departed the United States in March 1997 and subsequently re-entered the United States without being admitted in April 1997. The applicant contends that a previous affidavit signed by him stating that he re-entered the United State in 1997 was signed by him without fully understanding its meaning because he trusted the lawyer. In support of his contention, the applicant submits a copy of his pay check history confirming that he was paid through March 22, 1997 and his pay was resumed in September 1997. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

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

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year...and again seeks admission within 3 years of the date of such alien's departure or removal,
or

(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.

(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...

(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 record clearly establishes that the applicant departed the United States in March 1997 and returned in April 1997. To begin, the applicant, in his own certification, states that he departed the United States on Friday, March 28, 1997 from Falls Church, Virginia with the intention of going back to Guatemala. He notes that he crossed the border into Mexico at McAllen, Texas, stayed with a friend in Mexico, [REDACTED] for about two weeks, and then crossed the border at McAllen, Texas without inspection. See *Certification of* [REDACTED] dated June 21, 2002. In addition, a certification has been provided by [REDACTED] the applicant's friend, confirming that the applicant came to his house in Mexico in late March 1997, stayed with him for about two weeks, and then returned to the United States. See *Certification from* [REDACTED] dated June 11, 2002. Further, the

applicant declared on the Form I-485, Application to Register Permanent Residence or Adjust Status, that he had last entered the United States without inspection in April 1997. Finally, the AAO notes that the pay check history provided by the applicant on appeal further corroborates the applicant's certification that he in fact left the United States in late March 1997, as said history indicates that he was paid through March 22, 1997 and did not resume employment until September 1997.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The AAO thus concurs with the field office director that the applicant is inadmissible under section 212(a)(9)(C) of the Act.

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 case, the record establishes that the applicant last departed the United States on May 6, 2010. He is thus statutorily ineligible to apply for permission to reapply for admission until ten years after his last departure. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(i)(II) of the Act.

Having found the applicant statutorily ineligible for relief 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.