(b)(6)

**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals*
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

DATE: AUG 30 2013 Office: CIUDAD JUAREZ, MEXICO FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Michael Shumway

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by Field Office Director, Ciudad Juarez, Mexico, and 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 seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

In a decision, dated March 6, 2013, the field office director found that the applicant had failed to establish that the hardship being experienced by his wife rose to the level of extreme. The application was denied accordingly.

On appeal, counsel states that the field office erred and abused its discretion in denying the applicant's case.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> (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.
>
> ...
>
> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(9)(C) 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
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> (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 Attorney General [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

The record reflects that the applicant entered the United States without inspection in 1995. On May 26, 2010 he was placed in removal proceedings and granted voluntary departure. He departed the United States on October 14, 2010. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States from April 1, 1997, the date the unlawful presence provisions were enacted until October 2010, when he departed the United States. On May 27, 2013, the applicant was apprehended after crossing the Rio Grande River into the United States. The applicant reentered the United States without inspection approximately 14 days before his apprehension. On June 25, 2013, the applicant was expeditiously removed from the United States. Thus, we now find the applicant is also inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having reentered the United States, without being admitted, after accruing over one year of unlawful presence.

An applicant who is inadmissible under section 212(a)(9)(C)(i) of the Act must apply for consent to reapply for admission (Form I-212). However, an applicant who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than ten years have elapsed since the date of the alien's last departure from the United States and the applicant has

been physically outside the United States for at least 10 years. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006). 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 been physically outside the United States for 10 years, *and* Citizenship and Immigration Services has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on June 25, 2013. He is currently statutorily ineligible to apply for permission to reapply for admission.

We find that no purpose would be served in adjudicating the applicant's waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act when he is also inadmissible under section 212(a)(9)(C) of the Act. The applicant must spend 10 years outside the United States to be eligible to apply for relief of his inadmissibility under section 212(a)(9)(C) of the Act. When he is eligible to apply for this relief, he will no longer be inadmissible under section 212(a)(9)(B)(i) of the Act. Therefore, no purpose would be served in granting the applicant's waiver application.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

**DECISION:** The appeal is dismissed.