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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: JUL 0 9 2013 Office: SAN FERNANDO, CA 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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by Field Office Director, San Fernando, California 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 was also found 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. 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 August 24, 2012, the field office director found that the applicant was ineligible for a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act because he was also inadmissible under section 212(a)(9)(C)(i) of the Act. The field office director found that the applicant could not apply for relief from his inadmissibility under section 212(a)(9)(C)(i) of the Act until he had remained outside the United States for 10 years. He denied the application accordingly.

On appeal, the applicant submits additional evidence of hardship to his U.S. citizen spouse.

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-
>
> ...
>
> (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
>
> (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.

In the present case, the record reflects that the applicant entered the United States without inspection in February 1993 and did not depart until December 2002. In March 2003, the applicant reentered the United States without inspection at or near the San Ysidro Port of Entry. 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 December 2002, when he departed the United States. The applicant is also inadmissible under section 212(a)(9)(C)(i) of the Act for having reentered the United States without inspection after having been unlawfully present for more than one year.

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 ten 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 ten years ago, the applicant has been physically outside the United States for ten years, *and* that 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 in December 2002, but the applicant has not been

outside the United States for 10 years. 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. At the time 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 Form I-601.

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.