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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**

Date: **MAY 14 2013** Office: MEXICO CITY FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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. 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Mexico City. The matter 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 Act for having been unlawfully present in the United States for more than one year, section 212(a)(9)(C) of the Act for attempting to reenter the United States without being admitted after being unlawfully present for more than one year, and section 212(a)(9)(A)(i) of the Act as an alien previously removed from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and children in the United States.

The field office director found that the Act does not provide for a waiver for inadmissibility under sections 212(a)(9)(A)(i) or 212(a)(9)(C) of the Act. The field office director denied the waiver application accordingly.

On appeal, the applicant contends the decision of the field office director was a misapplication of the legal standards and ignored relevant factors to establish extreme hardship. The applicant submits additional evidence on appeal.

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

(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 [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.

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.

(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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subsection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

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

(A) *Certain aliens previously removed.*

(i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] . . . and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) *Other aliens.* Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

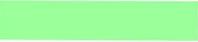
In this case, the record shows, and the applicant does not contest, that he entered the United States without inspection in March 2004 and remained until February 2007. The record also shows, and the applicant does not contest, that he attempted to enter the United States without inspection in February 2009 and was detained by immigration officials. The applicant was placed in expedited removal proceedings and was removed from the United States on March 17, 2009.

The applicant accrued unlawful presence for more than one year, beginning on December 8, 2005, when he turned eighteen years old, until his departure in February 2007. Therefore, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure. In addition, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for attempting to reenter the United States in February 2009 without being admitted after having been unlawfully present in the United States for an aggregate period of more than one year. There is no evidence in the record that the applicant is a VAWA self-petitioner and, therefore, there is no waiver available for this ground of inadmissibility. Furthermore, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(i) as an arriving alien who was ordered removed.

As explained fully in the AAO's concurrent decision denying the applicant's appeal of his Form I-212, the applicant is currently statutorily ineligible to apply for permission to reapply for admission. Therefore, no purpose would be served in discussing whether he has established the existence of extreme hardship to a qualifying relative.

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 and whether he is

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eligible for consideration of a waiver under section 212(a)(9)(B)(v) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.