



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 03 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: [REDACTED]

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:
[REDACTED]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Service Center Director, Nebraska Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C), for having unlawfully reentered the United States after having been unlawfully present in the United States for an aggregate period of more than 1 year. The applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In a decision dated April 12, 2013, the Service Center Director concluded that the applicant was not eligible to apply for admission to the United States as a result of her inadmissibility under section 212(a)(9)(C) of the Act.

On appeal, the applicant does not contest her inadmissibility, but states that the record establishes that her spouse would suffer extreme hardship.

In support of the waiver application, the record includes, but is not limited to: statements from the applicant; a statement for the applicant's husband; biographical information for the applicant, her husband and their son; information concerning the applicant's children from prior relationships; medical records for the applicant; country conditions information on Honduras; and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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.

...

The record reflects that the applicant initially entered the United States without inspection in January 1996 and remained in the United States until she departed in September 2001, accruing more than one year of unlawful presence during this period. The applicant began to accrue unlawful presence on April 1, 1997 the date that the unlawful presence provisions under the Act became effective. The applicant states that she subsequently reentered the United States without inspection in May 2003 and remained until her last departure in May 2012. As a result of the applicant's unlawful entry into the United States after having accrued an aggregate period of more than one year of unlawful presence, she is inadmissible under section 212(a)(9)(C)(i)(II) 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). 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* the applicant has obtained consent to reapply for admission (Form I-212). In the present matter, it has not been 10 years since the applicant's last departure in 2012. As such, the applicant is currently statutorily ineligible to apply for permission to reapply for admission, and the applicant's waiver application cannot cure this inadmissibility. The AAO acknowledges the documentation in the record regarding the hardship to the applicant's U.S. citizen spouse, but as no purpose would be served in adjudicating the application for a waiver of inadmissibility, the appeal will be dismissed as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.