



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 18 2013** Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 (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 Nebraska Service Center Director 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 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 country for more than one year and seeking readmission within ten years of his departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(C)(i)(I)¹ of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for an aggregate period of more than one year and entered or attempted to reenter the United States without being admitted or paroled.

The director concluded that the applicant did not qualify for the exception under section 212(a)(9)(C)(ii) of the Act, because the applicant's last departure from the United States was less than ten years ago. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director*, dated March 7, 2013.

On appeal, the applicant's spouse states that she urgently requires the applicant's presence in the United States due to her inability to financially support her four children and submits additional evidence of her hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed April 16, 2013.

The record contains, but is not limited to: Form I-290B; statements by the applicant, his spouse and the applicant's spouse's counselor; medical documents; financial records; photographs; birth and marriage certificates; and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1999 and returned to Mexico in 2004. He then was encountered by immigration authorities in the United States on three occasions in July 2004, was found to be present without admission and was allowed to voluntarily return to Mexico each time. He subsequently re-entered the United States without inspection in 2004 and remained until September 2012.

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

....

(C) Aliens unlawfully present after previous immigration violations. -

¹ The Service Center Director's decision indicates that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Section 212(a)(9)(C)(i)(II) of the Act states that an applicant is admissible for having entered or attempted reentry without admission or parole after having been ordered removed. The record reflects the applicant was allowed to voluntarily return to Mexico soon after his entries in July 2004 and was not ordered removed. The AAO notes that the director may have made a typographical error, because section 212(a)(9)(C)(i)(I), not section 212(a)(9)(C)(i)(II), applies in the applicant's case.

(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.

Based on his unlawful presence of more than one year from 1999 to 2004, and his attempted reentries and successful entry without inspection in to the United States in 2004, the AAO concurs that he is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The applicant does not contest his entries or this inadmissibility.

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. The record establishes that the applicant returned to Mexico in September 2012. He is thus currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(v) 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 his U.S. citizen spouse or whether he merits a waiver as a matter of discretion.

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

ORDER: The appeal is dismissed.