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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: SEP 1 8 2013 OFFICE: ANAHEIM, CALIFORNIA File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(a)(9)(C)(i)(I)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

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 International Adjudications Support Branch on behalf of the 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 ten years of his last departure from the United States, and section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), as an alien unlawfully present after previous immigration violations. The record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director concluded that because the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and has not been outside of the United States for 10 years following his last departure, he is statutorily ineligible to apply for permission to reapply for admission and thus no purpose would be served in adjudicating his application for a waiver under section 212(a)(9)(B)(v). *See Decision of the Field Office Director*, dated March 14, 2013. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied accordingly.

On appeal counsel contests inadmissibility under section 212(a)(9)(C)(i)(I) of the Act and asserts that the applicant entered the United States illegally only once. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received April 9, 2013.

The record contains, but is not limited to: Form I-290B, counsel's statement and appeal brief; a brief in support of the applicant's waiver application; various immigration applications and petitions; letters from the applicant's spouse, family, friends and a licensed clinical professional counselor; medical documents; financial documents; country-conditions documents; birth and marriage certificates and family photos; and documents related to the applicant's arrest and his subsequent return to Mexico. The record also includes Spanish-language documents, some of which have not been translated. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The entire record, with the exception of the Spanish-language documents that were not translated, was reviewed and considered in rendering this decision on the appeal.

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.

The record indicates that the applicant entered the United States without inspection on January 22, 2005. On February 25, 2006, the applicant was arrested by the Las Vegas Metropolitan Police Department, charged with "open container," and subsequently was remanded to the custody of Immigration and Customs Enforcement (ICE) agents. He then signed Form I-826, Notice of Rights and Request for Disposition, admitting that he was in the United States illegally and stating that he does not face harm in Mexico. On that form he also gave up his right to an immigration court hearing and expressed his wish to return to Mexico as soon as possible. The applicant was granted voluntary return the same day in March 2006, and his departure was witnessed by ICE agents. The alien number assigned to the applicant then and appearing on all documents throughout his immigration proceedings is the same under which he is currently designated, and several documents related to his arrest and voluntary return include his signature and photograph. The applicant accrued unlawful presence in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The record also shows that the applicant subsequently entered the United States without inspection in October 2006 and remained until he voluntarily returned to Mexico in June 2012. Based on the foregoing, the applicant was found to be additionally inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I).

Counsel asserts that the applicant entered the United States illegally only in October 2006 and that the record contains no legal basis to conclude otherwise. Counsel demands that the Department of State provide evidence for its accusation that resulted in the applicant being denied admission. The AAO finds counsel's assertions unpersuasive. Specifically, in addition to multiple documents related to the applicant's arrest by the Las Vegas Metropolitan Police Department and his detention by ICE and voluntary return to Mexico, the applicant's spouse writes:

> I met [the applicant] on a Friday; January 20, 2006 to be exact. I was a senior in High School .... A month and a half later ... (March 2006) [the applicant] was deported. We kept in contact while he resided in Mexico every day (just about). We decided he needed to come back that same year (2006), so he did come back on October 14th 2006.

It is incumbent upon the applicant to resolve inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). To counter the facts in the record that the applicant entered the United States twice without inspection, counsel submits a letter from an individual stating that the applicant worked as an assistant bricklayer in Sahuayo, Michoacán, Mexico from 2000 to

2006; a letter from the stating that the applicant is a native and resident of the city and works as a bricklayer; and various Spanish-language documents that appear to be receipts from 2012, bearing the applicant's name. The AAO finds that documentary evidence created by the Las Vegas Metropolitan Police Department and ICE, which includes the applicant's signature and photographs and shows that he entered the United States in January 2005 and returned to Mexico in March 2006, outweighs the letter from an unknown individual stating that the applicant worked in Mexico from 2000 to 2006. Accordingly, the AAO concurs with the Field Office Director that the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) of the Act.

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 has consented to the alien's reapplying for admission.

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* U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred in June 2012, less than ten years ago. He is 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.

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.