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

(b)(6)

Date: SEP 20 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

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:

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 Director, Nebraska Service Center, and 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 Guatemala who first entered the United States without being admitted in 2000. The applicant 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. The applicant was also found to be inadmissible under 212(a)(9)(C)(i)(I) of the Act, for entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States, and under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having entered the United States without being admitted after having been ordered removed. The applicant seeks a waiver of inadmissibility so that she may reside in the United States with her lawful permanent resident spouse and U.S. citizen children.

The director noted that there was no waiver available to the applicant based on her inadmissibility under section 212(a)(9)(C) of the Act because she had not waited outside the United States for 10 years as required by law. The applicant's Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Director,* dated November 15, 2012.

On appeal, counsel contends that there is no record of the applicant's removal. Further, counsel maintains that extreme hardship to the applicant's family has been established. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (B) Aliens Unlawfully Present.-
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> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
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> . . . .
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> (iii) Exceptions.-
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> (I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).
>
> ....

(v) Waiver.-The [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 [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.

(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 first entered the United States without admission in 2000. After a motor vehicle stop on May 7, 2000, the applicant was placed in removal proceedings. On July 27, 2000, the applicant was ordered removed in absentia. *See Order of the Immigration Judge,* dated July 27, 2000. The applicant did not depart the United States until January 2007 and subsequently re-entered the United States without being admitted in February 2007. The record indicates that the applicant departed the United States in July 2012. The applicant accrued unlawful presence from January 15, 2001, when the applicant turned 18 years of age, until her departure from the United States in January 2007. The AAO concurs with the director that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. In addition, as the applicant re-entered the United States without being admitted in February 2007 after accruing unlawful presence of more than one year, the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. Finally, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for re-entering the United States without being admitted in February 2007 after having been ordered removed in 2000.

On appeal, counsel asserts that no record exists of the applicant's removal. The AAO notes that the applicant was ordered removed under the name ' ' A fingerprint check matched the records from the removal to the applicant. The record clearly establishes that the applicant was ordered removed in July 2000. *See Decision of the Immigration Judge,* dated July 27, 2000. Even if the record failed to establish that the applicant was ordered removed in July 2000, the applicant remains statutorily ineligible for a waiver based on her inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, for having entered the United States without being admitted in February 2007 after having accrued unlawful presence in the United State of more than one year after turning 18 years of age.

The AAO notes that counsel indicates that the applicant is filing a Form I-212 Application for Permission to Reapply for Admission (Form I-212) to cure her inadmissibility. As correctly noted by the director, 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. In the present case, the record indicates that the applicant departed the United States in July 2012. The applicant is thus statutorily ineligible to apply for permission to reapply for admission until ten years after her last departure. As such, no purpose would be served in filing a Form I-212 or in adjudicating her waiver under section 212(a)(9)(B)(i)(II) 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.