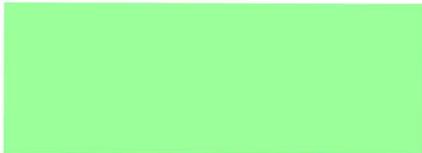




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



Date: **SEP 20 2013**

Office: ANAHEIM

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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch on behalf of the District Director, Mexico City, Mexico, 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 Mexico who first entered the United States without being admitted in July 2003. 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 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 in 2008 after having been ordered removed. The applicant seeks a waiver of inadmissibility so that he may reside in the United States with his U.S. citizen spouse.

The district director noted that there was no waiver available to the applicant based on his inadmissibility under section 212(a)(9)(C) of the Act because he 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 District Director*, dated July 27, 2009.

On appeal, filed in August 2009 and received by the AAO in June 2013, the applicant's spouse submits documentation in support of extreme hardship. 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.-

(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 [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 being admitted in July 2003. The applicant was placed in removal proceedings in July 2005. In October 2006, the applicant's request for voluntary departure was granted until January 29, 2007 with an alternate order or removal to Mexico. *See Order of the Immigration Judge*, dated October 3, 2006. The applicant complied with the voluntary departure order by departing the United States on January 29, 2007. In June 2008, the applicant was apprehended in the United States after having re-entered the United States without inspection and notes in the record indicate that he was voluntarily returned to Mexico on or around June 12, 2008. The applicant accrued unlawful presence from July 2003 until his 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, the AAO finds that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, for re-entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States.

With respect to the district director's finding that the applicant is statutorily ineligible for relief based on the finding that he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having procured entry to the United States without being admitted in 2008 after having been ordered removed from the United States, the AAO notes that the record fails to establish that the applicant was in fact removed from the United States. As noted above, in removal proceedings, the applicant was granted voluntary departure and complied with the order. As such, the district director erred in concluding that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Nevertheless, the applicant remains statutorily ineligible for a waiver

under section 212(a)(9)(C)(i)(I) of the Act, for re-entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States, as outlined in detail above.

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 establishes that the applicant was granted a voluntary return to Mexico in June 2008. The applicant is statutorily ineligible to apply for permission to reapply for admission until ten years after his last departure. As such, no purpose would be served in adjudicating his 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.