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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: SEP 25 2013

OFFICE: ANAHEIM

File: [REDACTED]

IN RE: [REDACTED]

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

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, Anaheim, California, 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 one year or more and seeking admission within 10 years of his last departure from the United States. The record reflects the applicant also was found to be inadmissible under section 212(a)(9)(C)(i)(I) 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 for having reentered the United States without being properly admitted. The record further reflects the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting material facts to procure benefits under the Act.¹ The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest the findings of inadmissibility under sections 212(a)(9)(B)(i)(II) or (a)(9)(C)(i)(I) of the Act. Rather, 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 with his wife and children.

The International Adjudications Support Branch concluded the applicant was inadmissible under a provision of the law for which there was no waiver available, and thereby, as a matter of discretion, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision on Behalf of the Field Office Director*, dated March 14, 2013.

On appeal, the applicant's spouse contends the U.S. Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application as: her family is suffering from "great hardship" in the applicant's absence; she is suffering from severe Anxiety Disorder with lapses of Depression; there are times when she does not want to continue living; their children need her and the applicant together; she and the applicant "married to be together for life", raising their children; and their youngest child was diagnosed with Attention Deficit Disorder, an illness for which he would be unable to receive prescriptive medication in Mexico. See *Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated April 10, 2013.²

The record includes, but is not limited to: letters of support; identity, medical, psychological, employment, financial, and academic documents; Internet articles; photographs; and documents on

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the District Director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). The record reflects the applicant presented an identity that did not belong to him upon apprehension by immigration officials about March 5, 2001 by indicating he was [REDACTED]

² The AAO notes the applicant's Form I-290B indicates a date of April 10, 2014.

conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act states, in pertinent part:

(C) Misrepresentation.-

(i) In general.- Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(a)(9) of the Act states, 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 Attorney General [now the Secretary of Homeland Security (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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

(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. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The record reflects the applicant initially entered the United States without inspection by immigration officials around October 1999 and remained until about March 5, 2001, when he voluntarily returned to Mexico upon apprehension by immigration officials. The record also reflects that upon apprehension, the applicant provided a name and date of birth that did not belong to him. The record further reflects the applicant subsequently entered the United States without inspection by immigration officials later in March 2001 and remained until around February 2012, when he voluntarily returned to Mexico and has remained to date. The applicant accrued unlawful presence from October 1999 until March 5, 2001, and from March 2001 until February 2012: periods in

excess of one year. Accordingly, the applicant is inadmissible pursuant to sections 212(a)(6)(C)(i), 212(a)(9)(B)(i)(II), and 212(a)(9)(C)(i)(I) of the Act, and is statutorily ineligible to apply for permission to reapply for admission into the United States under section 212(a)(9)(C)(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); *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 matter, the applicant's last departure from the United States occurred about February 2012. He is currently statutorily ineligible to apply for permission to reapply for admission by filing an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). As such, no purpose would be served in adjudicating his waiver under sections 212(a)(9)(B)(v) and 212(i) 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.