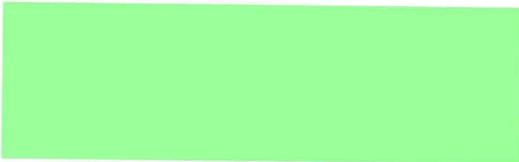


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

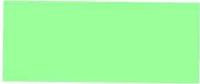


(b)(6)



Date: **APR 22 2014**

Office: NEBRASKA SERVICE CENTER

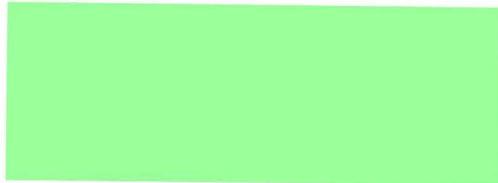
FILE: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:

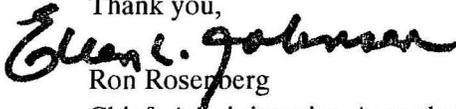


INSTRUCTIONS:

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. The matter 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 contends he is inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and step-children in the United States.

The director found that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, section 212(a)(9)(C)(i)(I) of the Act for re-entering the United States without being admitted after having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The director concluded that the applicant's inadmissibility under section 212(a)(9)(C)(i)(I) of the Act renders him ineligible to request consent to reapply for admission to the United States because he has not remained outside the United States for ten years, and, therefore, denied the waiver application as a matter of discretion.

On appeal, counsel contends the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act and submits documentation in support of the appeal.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on February 9, 2011; letters from the applicant; letters from Ms. [REDACTED] letters from the City Council of Coyame, Chihuahua, Mexico; a letter from Ms. [REDACTED] s employer; documents from the County Court in Midland, Texas; letters from Ms. [REDACTED] s children; a letter from Ms. [REDACTED] s mother and copies of her medical records; photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

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 of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty;  
and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

In this case, the record shows that the Texas Department of Public Safety encountered the applicant during a traffic stop on December 8, 2011, and the applicant was found to be in the United States illegally. *Record of Deportable/Inadmissible Alien (Form I-213)*, dated December 9, 2011. During this encounter, the applicant stated that his last entry into the United States was July 27, 2002, near Presidio, Texas. *Id.* The applicant was fingerprinted and his fingerprints were matched to February 18, 2008, when the applicant was previously fingerprinted, indicating a previous immigration history. *Id.* The applicant requested and was granted voluntary return to Mexico instead of being placed in removal proceedings. *Id.* The applicant returned to Mexico on December 9, 2011. *Departure Record (Form I-94)*, dated December 9, 2011. The record further shows that the applicant filed an immigrant visa application and certified under oath on January 28, 2013, that he entered the United States without inspection in February 2011 and remained in the United States until December 2011. Based on this information, the director found the applicant had reentered the United States without being admitted after having accrued more than one year of unlawful presence, and, therefore, inadmissible pursuant to 212(a)(9)(C)(i)(I) of the Act.

On appeal, the applicant states he gave the wrong information when he was interviewed in 2011 because he was nervous. According to the applicant, he unlawfully entered the United States after he met his wife, fell in love, and did not want to be apart from her. Counsel states the applicant has been in the United States before with a B-2 visa and returned to Mexico before the expiration of his authorized stay. According to counsel, the applicant was not near Presidio, Texas, in July 2002, but rather, in 2003, the applicant applied for a B-2 visa, which was denied. Counsel contends the

applicant was in Mexico in July 2002 and was not residing in the United States. Counsel submits a copy of the applicant's cancelled passport, a letter from his employer verifying he was employed in Mexico from April 2001 until April 2003, a copy of the applicant's voter card that he purportedly obtained in Mexico in 2003, and evidence the applicant signed documents regarding property he purchased in Mexico. Counsel asserts the charge that the applicant is inadmissible pursuant to 212(a)(9)(C)(i)(I) of the Act should be dropped.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any 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).

In this case, the applicant has given conflicting statements. The applicant first stated in December 2011 that his last entry into the United States was on July 27, 2002. The applicant now contends he did not enter the United States on July 27, 2002, and was not residing in the United States, but rather, that he entered the United States without inspection in February 2011. Therefore, the burden is on the applicant to resolve this inconsistency with independent, objective, and competent evidence.

After a careful review of the record, the AAO finds that the applicant has not met his burden of proving he is not inadmissible under section 212(a)(9)(C) of the Act. Counsel himself concedes that the applicant has been in the United States before, but contends the applicant had a B-2 visa and returned to Mexico before his authorized stay expired. However, records from the U.S. Department of State and a stamp on the last page of the applicant's passport indicate that the applicant was denied a U.S. visa on April 3, 2001. Neither of the applicant's passports in the record indicates he has ever lawfully entered the United States and there is no evidence he has ever been granted or issued a visitor's visa or a border crossing card. In addition, there is no evidence the applicant applied for a B-2 visa in 2003 as counsel contends. Moreover, counsel has not explained why a Mexican passport would be cancelled based the alleged denial of a U.S. visa in 2003 and, in any event, there is no indication of the date the passport was cancelled to substantiate this claim.

With respect to the voter registration card, the card shows only that the applicant obtained the card in 2000, prior to July 27, 2002, and is therefore irrelevant. Regarding the documents the applicant signed in Mexico for a land purchase, the applicant submits three certifications from a [REDACTED] who also submitted a letter of support attesting to the applicant's character. One certification shows that the applicant "submitted an application of a municipal property lot" on July 2, 2002. This certification is also prior to July 27, 2002, and is, therefore,

irrelevant. Two other certifications state only that the applicant was present in Mexico to sign documents on August 21, 2003, and again on April 5, 2006. Significantly, a copy of the July 2, 2002 document, produced on September 20, 2013 was submitted on appeal while there is no copy of either the August 21, 2003 or April 5, 2006 documents, only the September 20, 2013 certifications.

Regarding employment, the applicant submits a letter from [REDACTED] in Chihuahua, Mexico, which states that the applicant "worked for this company for the period of April, 2001 thru April 5, 2003." *Letter from* [REDACTED] dated September 21, 2013. The letter does not specify the applicant's job title or provide any specifics regarding his alleged two year employment. The applicant also submits a letter from the [REDACTED] in Coyame, Mexico, which states that the applicant worked in the payroll department from January until May 2009. This letter is written by the same [REDACTED] who submitted the certifications about the land purchase and a letter of support. According to the applicant's signed Biographic Information form (Form G-325A), the applicant was self-employed in "agriculture labor" and as a welder from March 2006 until he signed the form in December 2011. *Biographic Information form (Form G-325A)*, signed December 10, 2011. Therefore, the letter from the [REDACTED] conflicts with the Form G-325A.

The applicant has not provided sufficient, contemporaneous, competent, and consistent evidence to support the contention that he resided continuously in Mexico between July 27, 2002, and February 2011. Rather, the applicant has submitted evidence that is contradictory and questionable, particularly considering that several documents come from the same individual, one of which directly contradicts the applicant's Form G-325A. At best, the applicant established he worked in Mexico from April 2001 until April 2003, and that he signed documents in Mexico on August 21, 2003, and April 5, 2006. This evidence is insufficient to show that the applicant was not unlawfully present in the United States for an aggregate period of more than one year before he entered the United States without being admitted in February 2011. The applicant's explanation that he was nervous does not explain how or why he indicated the specific date of July 27, 2002, to officers after he was apprehended during the traffic stop and is insufficient to meet his burden of proof.

Therefore, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act as an alien who has been unlawfully present in the United States for an aggregate period of more than one year and who re-entered the United States without being admitted. There is no evidence in the record that the applicant is a VAWA self-petitioner and, therefore, there is no waiver available for this additional ground of 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 ten 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); *see also Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, the BIA has held that 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 this case, the applicant's last departure from the United States was on December 9, 2011, less than ten years ago. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. The appeal of the denial of the waiver application is dismissed as a matter of discretion as its approval would not result in the applicant's admissibility to the United States.

Even assuming the applicant established he was not inadmissible under section 212(a)(9)(C) of the Act, the applicant's waiver application would nonetheless be denied as he has not established extreme hardship to a qualifying relative. Although the record shows that the applicant's wife, Ms. [REDACTED] has four children between the ages of nine and fourteen from a previous abusive marriage, the record does not contain a copy of the custody or visitation agreement referenced in the divorce decree. Therefore, there is no evidence to corroborate Ms. [REDACTED] claim that she would be unable to relocate to Mexico because her ex-husband would not allow the children to move to Mexico. In addition, although she contends she cares for her mother who has health issues and who lives with her, the record does not establish that her mother lives with her and there is no letter from any health care professional substantiating the claim that her mother requires any assistance or has any limitations on activities of daily living. Further, while the applicant's spouse claims financial hardship, no documentation related to her financial situation has been submitted. If the applicant's claim that he only resided in the U.S. from February to December 2011 is accepted, it has not been established how that brief period of residence affected his spouse's living conditions from what it had been prior to his residence or after his departure. While the AAO is sympathetic to the family's circumstances, the record does not show that any hardship Ms. [REDACTED] would experience is unique or atypical compared to other individuals in similar circumstances either if she remains in the United States or if she relocates to Mexico. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected).

In sum, the applicant is currently statutorily ineligible to apply for permission to reapply for admission and his waiver application is dismissed as a matter of discretion. Even if the applicant was eligible to apply for permission to reapply for admission, his waiver application would nonetheless be denied for failing to establish extreme hardship to a qualifying relative.

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.