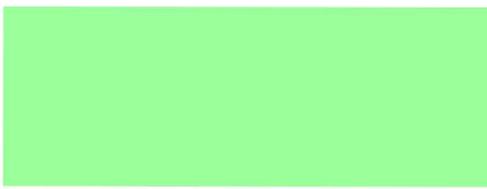


(b)(6)

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

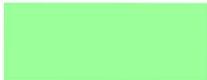


U.S. Citizenship
and Immigration
Services



Date: **JUN 17 2014**

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:

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 that reads "Ron Rosenberg".

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 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. The record indicates that the applicant is married to a U.S. citizen, and he is the father of a U.S. citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 spouse.

The record further reflects that the applicant claimed he entered the United States without inspection in 1997 and remained in the United States until 2004. The applicant stated that he departed the United States in 2004, re-entered without inspection later that year, and remained in the United States until his final departure in 2007. Thus, the applicant also was found inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I).

The Director concluded that the applicant is inadmissible under section 212(a)(9)(C) of the Act and requires consent to reapply for admission. However, he may not apply for consent to reapply for admission until he has been outside the United States for more than 10 years since the date of his last departure from the United States; therefore the Director denied his Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion. *See Decision of Director*, dated November 22, 2013.

On appeal, the applicant contends that he never departed the United States in 2004 and that he was continually present in the United States from 1997 until his departure in 2007.

The record includes, but is not limited to: statements by the applicant, the applicant's spouse, mother-in-law and sister-in-law; an employment document; a medical document for the applicant's daughter; and documents establishing relationships. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that the applicant was interviewed at the U.S. consulate in Ciudad Juarez, Mexico, on April 3, 2008, and he stated that he entered the United States without inspection in 1997 and remained in the United States until 2004, when he returned to Mexico. The applicant also stated that he re-entered the United States without inspection in 2004 and remained in the United States until January 2007. The consular officer determined that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act.

On appeal, the applicant states that he never departed the United States in 2004. The applicant asserts that he only entered the United States once, in 1997, and he remained in the United States until 2007. The applicant submits statements from his mother-in-law and sister-in-law, who state that they have known the applicant since 2002 and that he left the United States in 2007. Although his sister-in-law explains that the family moved into an apartment in 2004 and lived in their home until the applicant left in January 2007, she does not address whether the applicant continuously lived in the United States after they met or whether he departed from the United States briefly in 2004. The applicant's mother-in-law also does not address the issue of the applicant's departure and re-entry in her statement. In addition, the applicant submits a payroll document dated 2006, indicating that the applicant's employment with the company began on July 10, 2001. However, this document does not preclude the possibility that the applicant went to Mexico for a period of time in 2004.

Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)). Although the applicant's assertions and the statements of the applicant's mother-in-law and sister-in-law are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence directly addressing the issue of his departure and re-entry. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be

afforded it.”). Moreover, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record indicates that the applicant has failed to meet his burden to demonstrate that he is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission 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). 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 10 years ago, the applicant has remained outside the United States for 10 years *and* U.S. Citizenship and Immigration Services has consented to the applicant's reapplying for admission. In the present matter, the applicant departed the United States in 2007. He is therefore statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver under sections 212(a)(9)(B)(v) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether he has established extreme hardship to his U.S. citizen spouse or whether he merits a waiver as a matter of discretion.

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.