



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: **MAR 26 2014**

OFFICE: NEBRASKA SERVICE CENTER [REDACTED]

IN RE: [REDACTED]

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

[REDACTED]

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 Director, Nebraska Service Center, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure an immigration benefit by fraud or willful misrepresentation. The applicant was also found to be inadmissible pursuant to 212(a)(9)(B)(i)(II) of 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Director concluded that the applicant is, in addition to other grounds of inadmissibility, inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act, as an alien unlawfully present after previous immigration violations, and denied the application accordingly. *See Decision of the Director*, dated July 25, 2013.

On appeal, counsel for the applicant disputes the denial of the applicant's inadmissibility waiver due to her inadmissibility under section 212(a)(9)(C)(i), asserting that her entry to the United States on August 22, 2001 was lawful. Counsel further asserts that since the applicant is not barred under this section of the act, her waiver application should be adjudicated on the merits.

In support of the waiver application and appeal, the applicant submitted identity documents, letters from the applicant and his spouse, a psychological evaluation of the applicant's spouse, medical documentation, letters of support, family photographs, financial documentation and background country conditions relating to Albania. The entire record was reviewed and considered in rendering this decision.

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

- (i) 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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in

extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

The record reflects that the applicant attempted to enter the United States on July 22, 2000 pursuant the Visa Waiver Program with a Danish passport and I-94W belonging to another individual. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure entry to the United States through fraud or misrepresentation.

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

(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 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 Attorney General 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 Attorney General regarding a waiver under this clause.

The applicant is a native and citizen of Albania who was placed into removal proceedings after expressing a fear of returning to Albania. The applicant withdrew her asylum application on January 31, 2001 and was ordered removed from the United States.¹ The applicant was removed from the United States on February 12, 2001.

¹ The AAO notes that the applicant was issued a Form I-862, Notice to Appear, and placed in removal proceedings and was subsequently order removed by an immigration judge on January 31, 2001 after withdrawal of her asylum application. However, as she sought and was denied admission under the Visa Waiver Program, it appears she should have been issued a Form I-863 and placed in asylum-only proceedings before the immigration judge. See *Matter of Kanagasundram*, 22 I&N Dec. 963, 965 (BIA 1999) (holding that, once an immigration officer denies an alien's application for admission into the United States under the visa waiver pilot program, proceedings "must" be commenced with a Notice of Referral to Immigration Judge (Form I-863)).

The applicant asserts that she returned to the United States on August 22, 2001 and remained in the United States until her departure in May 2010. The Director determined that the applicant entered the United States without admission or parole in August 2001 and remained in the United States in unlawful status until her departure to Canada. The record reflects that applicant accrued over one year of unlawful presence in the United States and the applicant does not address her inadmissibility under this section on appeal. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 has consented to the alien's reapplying for admission.

The applicant was ordered removed from the United States on January 31, 2001 and departed from the United States on February 12, 2001. The Director determined that the applicant subsequently entered the United States without admission or parole in August 2001 and found the applicant to also be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act.

Counsel for the applicant asserts that the applicant's second entry to the United States cannot be considered illegal, as she was "inspected" and "admitted" upon her August 22, 2001 entry from Canada to the United States aboard a passenger train. Counsel contends that the applicant, like the alien in *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), was admitted to the United States, as her entry was procedurally proper. In *Matter of Quilantan*, it is undisputed that the respondent entered the United States as a car passenger waved through a border crossing by an immigration official. *Id.* Counsel asserts that the applicant was aboard a passenger train that crossed the Canada-United States border. Counsel further asserts that upon stopping, a boarding

immigration official asked no questions of the applicant. It is noted that the record does not contain supporting documentation for counsel's assertions concerning the applicant's manner of entry in August 2001. It is also noted that in her Form I-601, the applicant stated that she entered the United States without inspection in August 2001. The applicant also stated, in both her Form I-601 application and a submitted letter, contrary to counsel's assertions, that she entered the United States illegally before the expiration of her removal bar.

The applicant has failed to satisfy her burden of proof and demonstrate that she is not subject to inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission or parole subsequent to her removal from the United States.

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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). 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 departed the United States on February 12, 2001 and contends that she returned to the United States on August 22, 2001. The applicant asserts that she subsequently departed from the United States in May 2010. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Further, the applicant's appeal from her Form I-212, Application for Permission to Reapply for Admission into the United States after Departure or Removal, was denied by the AAO in a separate decision. She is currently statutorily ineligible to apply for permission to reapply for admission. As such, 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.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether she has established extreme hardship to a qualifying relative or whether she merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) or 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.