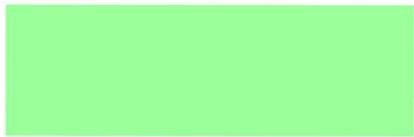


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

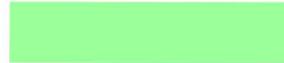


(b)(6)

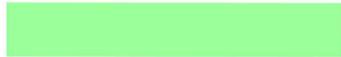


Date: **MAR 31 2014**

Office: MOUNT LAUREL, NJ

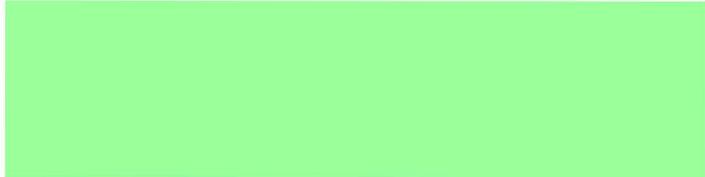


IN RE:



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:



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 Field Office Director, Mount Laurel, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under 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)(I) of the Act, 8 U.S.C. §1182(a)(9)(C)(i)(I), for having entered the United States without inspection after having accrued over one year of unlawful presence. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director noted that there was no waiver available to the applicant based on her inadmissibility under section 212(a)(9)(C)(i)(I) of the Act because she 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 Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated July 5, 2013.

In support of the appeal, counsel for the applicant submits the following: a brief; a declaration from the applicant; a declaration from the applicant's mother; mental health documentation; and a previously submitted affidavit from the applicant. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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.

....

(iii) Exceptions.-

....

(IV) Battered women and children.-Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if "violation of the terms of the alien's nonimmigrant visa" were substituted for "unlawful

entry into the United States" in subclause (III) of that paragraph.

....

(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 Attorney General (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.

(iii) Waiver - The Secretary of Homeland Security may waive the application if 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.

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the record establishes that the applicant entered the United States in 1999 with a valid B-2 nonimmigrant visa. The applicant obtained an extension of status with permission to remain until

September 2000. The applicant did not depart the United States until June 2004. The AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having accrued more than one year of unlawful presence in the United States.

Regarding the applicant's ground of inadmissible under section 212(a)(9)(C)(i)(I) of the Act, as noted above, the applicant entered the United States with a valid nonimmigrant visa and remained beyond her period of authorized stay. She did not depart the United States until 2004. In September 2004, the applicant again re-entered the United States without being admitted. The AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, for procuring entry to the United States without being admitted after having accrued more than one year of unlawful presence in the United states.

On appeal, counsel maintains that the applicant never accrued unlawful presence status from 1999 to 2004 because she was the victim of serious domestic violence that was substantially connected to the violation of the terms of her nonimmigrant visa and thus, she is eligible for a waiver of inadmissibility. In support, counsel references sections 212(a)(6)(A)(ii) and 212(a)(9)(B)(iii)(IV) of the Act. *See Brief in Support of Appeal*, dated September 3, 2013. Both of the provisions referenced by counsel are applicable only to self-petitioners under the Violence Against Women Act (VAWA).¹ The record does not establish that the applicant is the beneficiary of a VAWA-based self-petition pursuant to section 204(a)(1)(A)(iii), (A)(iv), (B)(ii), or (B)(iii) of the Act. The applicant was granted U nonimmigrant status for having established that she was a victim of criminal activity, however she is not a VAWA self-petitioner. As such, the AAO concurs with the field office director that the applicant is inadmissible pursuant to sections 212(a)(9)(B)(i)(II) and 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 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. A waiver is available under section 212(a)(9)(C)(iii) for VAWA self-petitioners who can establish a connection between the battering or extreme cruelty and the alien's removal, departure, reentry or attempted reentry into the United States. However, as noted above, the applicant is not a

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

- (ii) Exception for certain battered women and children.-Clause (i) shall not apply to an alien who demonstrates that-
 - (I) the alien is a VAWA self-petitioner;
 - (II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien . . . and
 - (III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

VAWA self-petitioner, and she is therefore not eligible for a waiver of section 212(a)(9)(C)(i) inadmissibility.

In the present matter, the applicant is currently residing in the United States and has not remained outside the United States for 10 years since her last departure. 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.

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.