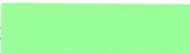




U.S. Citizenship
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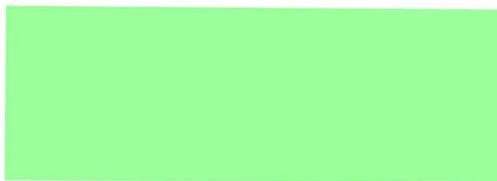


DATE: **MAY 20 2014** OFFICE: NEWARK FILE: 

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, 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, Newark. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Argentina 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 readmission within 10 years of departure from the United States. The applicant is also inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for having unlawfully reentered the United States after having been unlawfully present in the United States for an aggregate period of more than 1 year. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In a decision dated September 19, 2013, the Field Office Director concluded that the applicant was not eligible to apply for admission to the United States as a result of her inadmissibility under section 212(a)(9)(C) of the Act.

On appeal, counsel for the applicant states that the applicant is eligible to file for adjustment of status “as she qualifies for adjustment of status under [section] 245(i)” of the Act.

In support of the waiver application, the record includes, but is not limited to: letters from counsel; statements from the applicant and her spouse; biographical information for the applicant, her spouse, their children, and her mother; letters from the applicant’s son, mother, step-daughter, and sister; school and medical records for the applicant’s son; employment records for the applicant; financial documentation for the applicant’s spouse; and documentation of the applicant’s immigration history. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, 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 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.

The record reflects that the applicant first entered the United States as a visitor on March 20, 1998, with permission to remain until June 19, 1998. The applicant states that she remained in the United States until on or about October 2001. She began to accrue unlawful presence when she turned 18 years old on June 2, 1999 until the date of her departure, making her inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant was again admitted to the United States pursuant to the visa waiver program on February 21, 2002, with permission to remain in the United States until May 22, 2002. The applicant remained in the United States until her departure on October 1, 2004, again accruing more than one year of unlawful presence. The applicant states that she subsequently reentered the United States without inspection in 2008 and has remained here unlawfully since that time. As a result of the applicant's unlawful entry into the United States after having accrued more than one year of unlawful presence, she is inadmissible under section 212(a)(9)(C)(i)(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* the applicant has obtained consent to reapply for admission. In the present matter, the applicant is in the United States and has not remained outside of the United States for a period of ten years. As such, the applicant is currently statutorily ineligible to apply for permission to reapply for admission, and the applicant's waiver application cannot cure this inadmissibility.

Counsel for the applicant states that the applicant is eligible to apply for a waiver, as she is eligible for adjustment of status under section 245(i) of the Act based on an I-130 petition filed on her behalf by her father on March 22, 1999, and the evidence she submitted to document her physical presence in the United States on December 21, 2000. We do not need to make a determination regarding the applicant's eligibility to apply for adjustment of status under section 245(i) of the Act, as her eligibility to apply for adjustment of status does not cure her inadmissibility under section 212(a)(9)(C) of the Act. *See Matter of Briones*, 24 I&N Dec. 355 (BIA 2007) (holding that section 212(a)(9)(C)(i)(I) of the Act bars aliens from adjustment of status under section 245(i)); *Cheruku v. Attorney General of U.S.*, 662 F.3d 198, 204 (3rd Cir. 2011) (holding that 245(i) eligibility does not waive inadmissibility under section 212(a)(9)(B) of the Act).

The AAO acknowledges the documentation in the record regarding the hardship to the applicant's U.S. citizen spouse and U.S. lawful permanent resident mother, but as no purpose would be served in adjudicating the application for a waiver of inadmissibility, the appeal will be dismissed 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.