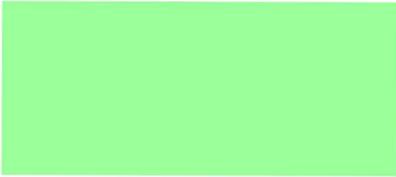


(b)(6)



U.S. Citizenship
and Immigration
Services

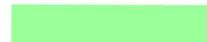


NOV 06 2014

Date:

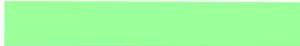
Office: NEBRASKA SERVICE CENTER

FILE:



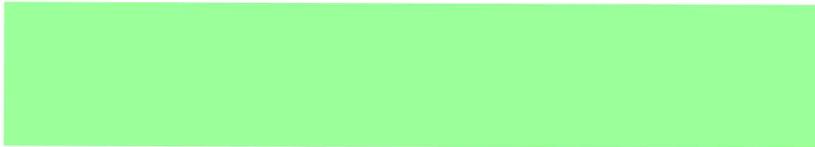
IN RE:

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:



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 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 her last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and she is the mother of three U.S. citizen children. She 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 her spouse.

The record further reflects that the applicant entered the United States without inspection in 1994 and accrued unlawful presence in the United States between 1994 and 2000, and that the application subsequently re-entered without inspection in 2001 and remained in the United States until her 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)(i) of the Act and requires consent to reapply for admission. However, she may not apply for consent to reapply for admission until she has been outside the United States for more than 10 years since the date of her last departure from the United States; therefore the Director denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion. *See Decision of Director*, dated January 27, 2014.

On appeal, counsel contends that the applicant never resided in the United States prior to 2001, that she lived solely in Mexico until her first entry to the United States in 2001, and that her misstatement about the alleged entry in 1994 on the Form I-130 was due to incompetent and incorrect advice by a “notario.” Counsel submits documentation indicating that the applicant was residing in Mexico between 1994 and 2001.

The record includes, but is not limited to: briefs by counsel in support of the Form I-601 and Form I-290B, Notice of Appeal or Motion; statements by the applicant and the applicant’s spouse; medical and psychological documentation for the applicant’s spouse; financial documentation; letters of reference; country-conditions information on Mexico; a 1993 voter registration card; a letter from an official of the government of Mexico dated September 25, 2008; a letter of employment dated December 28, 2010; and copies of prescriptions and store receipts. 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 October 31, 2007, and she stated that she entered the United States without inspection in 1994 and remained in the United States until 2000, and that she re-entered the United States without inspection in 2001 and remained in the United States until October 2007. The consular officer determined that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act.

On appeal, counsel contends that the applicant never resided in the United States prior to 2001 and that she lived solely in Mexico until her first entry to the United States in 2001. Counsel contends that the finding of the consular officer was based on mistaken information given by the applicant. Counsel further states that her misstatement about the alleged entry in 1994 on the Form I-130 was due to incompetent and incorrect advice by a "notario." The information regarding the applicant's presence in the United States appears on Form G-325A, Biographic Information, which was submitted with the Form I-130, Petition for Alien Relative, and lists an address in California where the applicant resided between March 1994 and August 2001. Counsel states that the applicant made a timely retraction of the misstatement that she was in the United States prior to 2001; however, there is no evidence in the record that the applicant made any retraction during her interview at the U.S. consulate in Ciudad Juarez, Mexico, on October 31, 2007.

Counsel submits evidence in support of the applicant's claim of having resided in Mexico prior to 2001. The evidence includes an employment letter, dated December 28, 2010, indicating that the applicant was employed in Mexico from 1997 to 1999, a letter from a government official dated September 25, 2008, indicating that the applicant lived in Mexico from 1995 to 2000, a 1993 voter

registration card from Mexico, and copies of prescriptions and store receipts in Mexico with dates between 1993 and 1999.

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 documentation that the applicant was in Mexico prior to 2001 is relevant and has been taken into consideration, it does not establish that the applicant did not reside in the United States before 2001. The voter registration card issued in 1993 does not establish that she resided in Mexico until 2001. The employment letter dated December 28, 2010 and submitted to the record indicates that the applicant was employed in Mexico from 1997 to 1999; however, the letter provides little detail, is not notarized, and provides no documentation to establish the identity of the person who submitted the letter. Similarly, the letter from an official of the municipality of [REDACTED] in Mexico is not notarized, provides no documentation to establish the identity of the author of the letter, and provides no basis to establish how the author knew the applicant for the period between 1995 and 2000. Copies of prescriptions and receipts in Mexico between 1993 and 1999 fail to establish her presence in Mexico for that entire period until 2001. Furthermore, the record indicates that the applicant stated under oath during her interview at the U.S. consulate in Ciudad Juarez, Mexico, on October 31, 2007 that she accrued unlawful presence in the United States between 1994 and 2000 following her entry without inspection in 1994. There is no indication that the applicant made a timely retraction to her statement on the Form G-325A, Biographic Information, that she resided at a California address between 1994 and 2001.

The record indicates that the applicant has failed to meet her burden to demonstrate that she 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. She is therefore statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver under section 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 she has established extreme hardship to her U.S. citizen spouse or whether she merits a waiver as a matter of discretion.

(b)(6)

NON-PRECEDENT DECISION

Page 5

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.