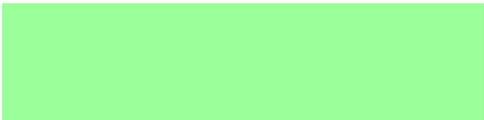




U.S. Citizenship
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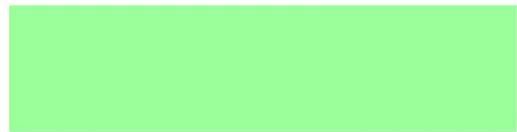
DATE: **OCT 20 2014** OFFICE: TUCSON, AZ

FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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, Tucson, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(C)(ii) of the Act, a ground for which no waiver was available, and denied the application accordingly.¹ *See Decision of Field Office Director* dated August 1, 2013.

On appeal, filed on or about August 28, 2013 and received by the AAO on August 21, 2014, counsel submits a statement on the Form I-290B, Notice of Appeal or Motion. Therein, counsel contends the applicant did not receive a decision on the merits of his application, and the decision was arbitrary. Counsel further contends the Field Office Director failed to consider the evidence submitted, provided no legal grounds for the decision, and made no findings of fact.

The record contains, but is not limited to: a statement from the applicant's spouse; letters from medical services providers; medical, financial, and employment records; documentation of birth, death, marriage, divorce, and citizenship; criminal records; other applications and petitions; and photographs. 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.

¹ The Field Office Director incorrectly cited to section 212(a)(9)(C)(ii) of the Act. The record reflects that the correct citation is to section 212(a)(9)(C)(i)(I) of the Act.

(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...

In this case, the record reflects that the applicant was issued a border crossing card in January 2002. The applicant states that he was admitted to the United States several times after presenting that border crossing card until 2006. The record reflects that, pursuant to a request for admission in February 2006, immigration officials confiscated the applicant's border crossing card because he was unable to provide sufficient documentation of his residency in Mexico and his solvency. The applicant admits that he subsequently entered the United States without inspection in September 2006, and remained until March 2008, when he was apprehended by immigration officials and allowed to voluntarily return to Mexico. He also admits that he re-entered the United States without inspection on June 11, 2008, and has remained since that date.²

The record therefore reflects that the applicant accrued more than one year of unlawful presence, from September 2006 until March 2008, and subsequently re-entered the United States without being admitted on June 11, 2008. As such, the applicant is inadmissible pursuant to 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 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. In the present matter, the applicant is currently residing in the United States and therefore, has not remained outside the United States for 10 years since his 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.³

² The record reflects that the applicant was also apprehended by immigration officials in Arizona on April 17, 2008, and May 7, 2008. He was allowed to voluntarily return to Mexico both times.

³ The applicant may also be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act due to a possible 2008 conviction for criminal damage under Arizona Criminal Code § 13-1602. However, as the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, for which there is no waiver, we need not address inadmissibility under section 212(a)(2)(A)(i)(I) of the Act at this time.

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.