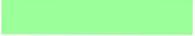
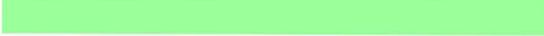


(b)(6)



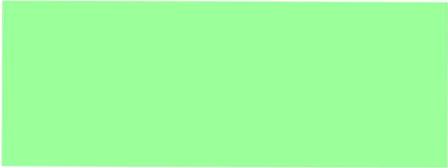
U.S. Citizenship
and Immigration
Services



Date: Office: NEBRASKA SERVICE CENTER FILE: 
OCT 23 2014
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 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 is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having re-entered the United States without inspection after a previous period of unlawful presence of more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The Director concluded that the applicant was not eligible to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and denied the applicant's waiver application as a matter of discretion. *See Decision of the Director*, dated February 20, 2014.

On appeal, the applicant asserts that his spouse and children are experiencing financial and emotional hardship due to his inadmissibility. Counsel also asserts that the applicant filed a Form I-212 and that his application for permission to reapply for admission should be considered nunc pro tunc.

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 Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

- (1) the alien's having been battered or subjected to extreme cruelty;
and
- (2) the alien's--
 - (A) removal;
 - (B) departure from the United States;
 - (C) reentry or reentries into the United States; or
 - (D) attempted reentry into the United States.

The record indicates that the applicant entered the United States without inspection in 1999 and remained until he departed in April 2002, a period more than one year. The applicant attempted to reenter the United States on April 20, 2002, then entered the United States without inspection sometime in late 2002, and remained until he departed in 2010. As the applicant accrued a period of unlawful presence for a period over one year from January 2000, when he turned 18 years of age, until April 2002, and then entered the United States without inspection he 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.

Counsel asserts that the applicant previously filed a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), and that this application should be granted nunc pro tunc. However, a Form I-212 may only be granted nunc pro tunc in two situations when appropriate and necessary to the disposition of the case: (1) where the only ground of deportability or inadmissibility would thereby be eliminated; and (2) where the alien would receive a grant of adjustment of status in conjunction with the grant of any appropriate waivers of inadmissibility. *Matter of Ng*, 17 I & N Dec. 63 (BIA 1979); *Matter of Ducret*, 15 I & N Dec. 620 (BIA 1976).

In the present matter, the applicant's last departure from the United States occurred in 2010, less than ten years ago. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such, nunc pro tunc relief is not appropriate for the disposition of this case because the applicant is statutorily ineligible to apply for relief and the applicant would remain

inadmissible. 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 proceedings for application for waiver of grounds of inadmissibility under section 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.