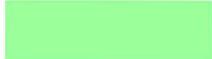


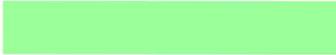
(b)(6)



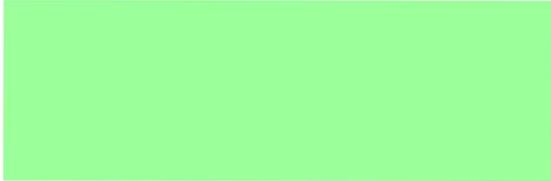
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: **OCT 27 2014** 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,


f- Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala 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)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), based on the applicant's removal from the United States in 1999 and his subsequent reentry without inspection in 2009. The applicant is a beneficiary of an approved Petition for Alien Relative (Form I-130) and 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 his U.S. citizen parents.

Based on the applicant's removal and subsequent reentry to the United States without inspection the director concluded that the applicant did not meet the requirements for consent to reapply for admission because he has not remained outside the United States for 10 years since the date of his last departure. The Application for Waiver of Ground of Inadmissibility (Form I-601) was denied as a matter of discretion. *Decision of the Director*, dated March 18, 2014.

On appeal counsel for the applicant contends that the removal proceedings against the applicant were terminated, therefore there is no prior order of removal against him and his waiver application should be decided on the hardship to his U.S. citizen parents. With the appeal counsel submits a brief and copies of orders from an immigration judge. The record contains departure verification for the applicant dated May 2012 by the U.S. Embassy in Guatemala, a psychological evaluation and medical information for the applicant's parents, and evidence submitted in conjunction with an Application to Adjust Status (Form I-485). 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...

Section 212(a)(9)(C) states:

(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 record reflects that the applicant entered the United States without inspection on August 18, 1998. On that date the applicant was issued a Notice to Appear before an immigration judge, but failed to appear and was given an in absentia removal order on March 18, 1999. The applicant was subsequently taken into custody by agents of the U.S. Immigration and Naturalization Service and was removed from the United States to Guatemala on June 22, 1999. The applicant reentered the United States without inspection in June 2009, and then departed voluntarily in December 2011. The applicant was found by a consular officer to have been unlawfully present in the United States from his June 2009 entry without inspection until he departed in December 2011. The service center director further found the applicant to be inadmissible under section 212(a)(9)(C)(i)(II) of the Act based on his entry into the United States without being admitted in June 2009 after having been removed in June 1999.

On appeal counsel states that in May 2012 he filed a motion to reopen the applicant's removal proceedings in order for the applicant to pursue consular processing of his approved I-130 petition. Counsel states that when he appeared without the applicant before an immigration judge in June 2012 the judge ordered the applicant removed in absentia. Counsel states that in November 2012 he

filed another motion to reopen with the immigration court and that on January 29, 2013, an immigration judge terminated proceedings. Counsel asserts that as an immigration judge terminated proceedings there is no prior order of removal against the applicant and his waiver applicant should be decided on the merits and hardship to his U.S. citizen parents.

Here the record establishes that the applicant was removed from the United States in June 1999 pursuant to a removal order issued by an immigration judge under section 240 of the Act. Although removal proceedings against the applicant were terminated in 2013, 14 years after the applicant was removed, Counsel has not provided any authority to support the assertion that the subsequent reopening and termination of the removal proceedings “voids any prior removal orders” and renders section 212(a)(9)(C)(i)(II) of the Act inapplicable. The applicant was ordered removed by an immigration judge in proceedings under section 240 of the Act, the removal order was executed in 1999, and the applicant reentered the United States without inspection in 2009, and he is thus 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 10 years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. The record establishes that the applicant returned to Guatemala on December 25, 2011. He is thus currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his 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 he has established extreme hardship to his U.S. citizen parents or whether he merits a waiver 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.