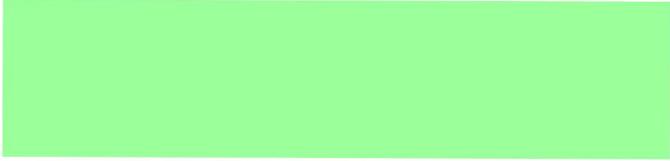




U.S. Citizenship
and Immigration
Services

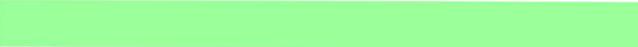
(b)(6)



DATE: FEB 10 2015

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:

SELF-REPRESENTED

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, 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 one year or more and seeking admission within ten years of his last departure from the United States. The record also reflects a U.S. consular officer found the applicant inadmissible pursuant to section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(3)(A)(ii), for seeking to enter the United States to engage in unlawful activity. 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) to reside with his U.S. citizen spouse and children in the United States.

The Director determined U.S. Citizenship and Immigration Services (USCIS) does not have the authority to review inadmissibility findings made by the U.S. Department of State. The Director also concluded that since a waiver is not available for the applicant’s inadmissibility under section 212(a)(3)(A)(ii), the applicant would remain inadmissible even if a waiver were granted for the applicant’s other inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion. *See Decision of the Director*, dated June 12, 2014.

On appeal, the applicant’s spouse urges USCIS to approve the applicant’s waiver application as she needs the applicant’s assistance, because she is unable to work and to take care of their children at the same time. The applicant’s spouse also indicates that family ties, health and economic issues, and concerns about educational opportunities prevent her and their children from living with the applicant in Mexico. *See Form I-290B, Notice of Appeal or Motion*, dated July 10, 2014.

The record includes, but is not limited to: a statement and affidavit by the applicant and his spouse; correspondence; letters and affidavits of support; documents concerning identity and relationships; employment, financial, medical, police, and psychological documents; photographs; Internet articles; and documents about conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(3) of the Act provides, in relevant part:

(A) In General.-

Any alien who a consular officer or the Attorney General [now Secretary of Homeland Security (Secretary)] knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

...

(ii) any other unlawful activity

...

is inadmissible.

The record reflects that during the applicant's immigrant-visa interview with the U.S. Consulate in Ciudad Juarez, Mexico on May [REDACTED] the consular officer noted that the applicant has multiple tattoos, including some that demonstrate gang affiliation. The applicant denied ever being a member of a gang, and the consular officer referred him for an additional interview to discuss his possible gang affiliation. The record indicates that based on the subsequent interview, the U.S. Consulate concluded the applicant was involved with the "[REDACTED]" gang, and he would continue to be involved with the gang if he returned to the United States. Based on the foregoing, the U.S. Consulate determined the applicant was inadmissible under section 212(a)(3)(A)(ii) of the Act and denied the applicant an immigrant visa. The applicant contests this finding of inadmissibility.

In an undated statement, the applicant indicates that his waiver application should be approved, because he is a person of good moral character despite his entry into the United States without inspection by U.S. immigration officials in October 2001, he has not committed any crimes, and his family is suffering due to their separation caused by his absence. In support of his contentions, the applicant submits: several letters and affidavits from family members, his family's parish, neighbors, and co-workers; a letter issued by the Record Services Division of the [REDACTED] Department of Police dated March 9, 2011, indicating that a search of the applicant's name and date of birth "disclosed no conviction or sentence of imprisonment for any criminal offense"; a local criminal history check by the [REDACTED] Police Department, dated January 30, 2012, reflecting the applicant's citations on July [REDACTED] for motor vehicle-related violations; billing statements; and paystubs, indicating his spouse earns an hourly salary of \$7.75.

The applicant asserts he is not affiliated with any criminal organizations and opines that the U.S. Consulate concluded that he has such affiliations because of his tattoos. On appeal the applicant attempts to explain the meaning of each of his tattoos, indicating they relate to his religious beliefs, nicknames, and familial relationships. The applicant's spouse also indicates the applicant's tattoos do not signify a relationship to any criminal organizations, and she has similar tattoos based on her religious beliefs and family relationships. To support his spouse's contentions, the applicant submits two photographs of her showing a tattoo on her leg.

The applicant's spouse indicates her family, including the applicant, is protected by the First Amendment of the U.S. Constitution, because it protects the right to freedom of religion, and their religious beliefs and opinions concerning [REDACTED] the subject of one of their common tattoos, are not subversive. Assertions concerning U.S. Constitutional rights, however, are not within our appellate jurisdiction; therefore this assertion will not be addressed in the present decision.

The Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." See section 235(b)(2)(A) of the Act. See also 240(c)(2)(A) of the Act. Based on the record before us and the determination that the applicant has been affiliated with the "[REDACTED]" gang and would continue his affiliation if he returned to the United States, the record reflects that the applicant is inadmissible under section 212(a)(3)(A)(ii) of the Act.

(b)(6)

NON-PRECEDENT DECISION

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The Act does not include a provision for a waiver of inadmissibility under section 212(a)(3)(A)(ii), and thereby, the applicant is currently statutorily ineligible to apply for a waiver of grounds of inadmissibility. As such, no purpose would be served in determining his eligibility for a waiver under section 212(a)(9)(B)(v) of the Act or whether he warrants a favorable exercise 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.