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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 30 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 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 for one year or more and seeking readmission within 10 years of his last departure; and pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for an aggregate period of more than one year and subsequently entering the United States without being admitted. The applicant's spouse is a U.S. citizen. 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.

The Director found that the applicant would be inadmissible under section 212(a)(9)(C) of the Act even if a waiver of section 212(a)(9)(B)(v) inadmissibility was granted, and he denied the Form I-601, Applicant for Waiver of Grounds of Inadmissibility, as a matter of discretion. *Decision of the Director*, dated December 31, 2013. In response to a motion to reopen and reconsider, the Director subsequently found that the applicant did not overcome the grounds for denial and again denied the application. *Second Decision of the Director*, dated August 18, 2014.

On appeal, the applicant states that although the Director admitted that he properly submitted evidence to show that he was in Mexico between 1998 and 2002, the Director claimed the documents were insufficient and included altered information; the U.S. Department of State did not inform him of their concerns regarding alterations to his documents; and the U.S. Department of State is able to independently verify the authenticity of his documents to resolve their concerns. *Letter Submitted with Form I-290B, Notice of Appeal or Motion*, dated September 5, 2014.

The record includes, but is not limited to, statements from the applicant and his spouse, letters of support, financial records, documents in Spanish, and phone records.

8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to [U.S. Citizenship and Immigration Services (USCIS)] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The entire record was reviewed and considered, other than the untranslated documents in Spanish, in arriving at our decision on the appeal.

Section 212(a)(9)(B) 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-
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> . . . .
>
> (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.
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> . . . .
>
> (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 [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.

The record reflects that applicant initially claimed that he had entered the United States without inspection in January 1998 and he returned to Mexico in November 2002. He also claimed that he re-entered the United States without inspection in November 2008 and he returned to Mexico in April 2011. He accrued unlawful presence for over one year between 1998 and 2002 and again between 2008 and 2011. The applicant therefore is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of his April 2011 departure from the United States. The applicant does not contest this ground of inadmissibility.

Section 212(a)(9)(C) of the Act states in pertinent part:

> Aliens unlawfully present after previous immigration violations.-
> (i) In general.-Any alien who-
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> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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> (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 accrued more than one year of unlawful presence, from January 1998 until November 2002, and subsequently entered the United States without inspection. He asserts on appeal that he resided in Mexico between 1998 and 2002. He submits evidence that he describes as "identity documents, letters of employment, payment receipts, and property transfer documents," to support this assertion; however, the documents that appear to be related to his claim are in Spanish and do not include translations. As such, we may not consider them. As the applicant failed to submit certified translations of his Spanish-language evidence, we cannot determine whether the evidence supports his claims. *See* 8 C.F.R. § 103.2(b)(3).

Concerning the applicant's claim that the U.S. Department of State did not notify him of concerns with alterations in his documents, we note that the Director informed him of these concerns in his August 18, 2014, decision. The applicant asserts that the U.S. Department of State is able to independently verify his documents to resolve concerns about their authenticity. Though he provides no legal authority for his assertion, the applicant raises a matter concerning U.S. Department of State procedures, which do not fall within our appellate jurisdiction.

We therefore find the applicant inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act, for having been unlawfully present in the United States for an aggregate period of more than one year and subsequently entering the United States without being admitted.

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.

The record establishes that the applicant's last departure from the United States occurred in April 2011. He has not remained outside of the United States for the required period 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.

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.