



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 09 2015**

FILE: [REDACTED]

APPLICATION RECEIPT: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Service Center Director, Nebraska Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. 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). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen step-father and lawful permanent resident mother.

The Service Center Director concluded that the applicant's inadmissibility will continue until she obtains consent to reapply under section 212(a)(9)(C)(i)(I) of the Act, and she is ineligible to seek consent until she remains outside the United States for at least 10 consecutive years. The Service Center Director denied the application accordingly. *See Decision of Service Center Director*, dated November 6, 2014.

On appeal, the applicant asserts that because she was a minor while she was accruing unlawful presence, she should be exempt from this ground of inadmissibility. *See Form I-290B, Notice of Appeal or Motion*, filed December 8, 2014.

The record includes, but is not limited to, identity and relationship documents, school records, statements from the applicant's step-father, and letters from friends and relatives regarding the applicant's good moral character. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection when she was one year old in [REDACTED] and departed the country in September 2004. In [REDACTED] she entered the United States without inspection at the age of [REDACTED], and she remained in this country until 2014. The applicant became [REDACTED] years old after she returned to Mexico in [REDACTED].

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-

(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 Service Center Director's finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act in the instant case is based on the applicant's entry into the United States without being admitted in [REDACTED], after having accrued over one year of unlawful presence by residing in the United States between [REDACTED] and [REDACTED].

On appeal, the applicant asserts that since she was a minor when she accrued unlawful presence, she should be exempt from this ground of inadmissibility. There exists an exemption for minors as it relates to section 212(a)(9)(B) of the Act. No such exemption exists, however, in relation to section 212(a)(9)(C). See *Memorandum from Donald Neufeld, Act. Assoc. Dir., Domestic Operations, Lori Scialabba, Assoc. Dir., Refugee, Asylum and International Operations, Pearl Chang, Acting Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Service, to Field Leadership, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act,"* dated May 6, 2009 (statutory exceptions to unlawful presence provisions of the Act do not apply for purposes of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act). Therefore we affirm the Service Center Director's finding of inadmissibility under 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 U.S. Citizenship and Immigration Services has consented to the applicant's reapplying for admission. The record indicates that the applicant returned to Mexico in [REDACTED]. She is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating her waiver.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether she has established extreme hardship to her parents or whether she 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.