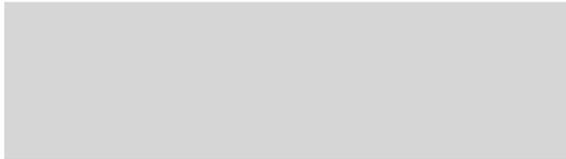




(b)(6)



DATE: **JUN 05 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:
[REDACTED]

INSTRUCTIONS:

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,

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 Mexico 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)(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 reentering the United States without being admitted. The applicant is the 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 spouse and child.

The director found that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and is statutorily ineligible to apply for permission to reapply for admission, and the director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as a matter of discretion, as the applicant would remain inadmissible even if a waiver were granted. *Decision of the Field Office Director*, dated October 10, 2014.

On appeal the applicant states that he traveled to Mexico for his consular interview based on poor advice from his previous attorney and that he was not aware that departing the United States would trigger a bar to admissibility. He further asserts that USCIS did not properly consider the factors in his case or address extreme hardship to his U.S. citizen spouse. The record contains statements from the applicant and his spouse, letters of support from family and friends of the applicant and his spouse, financial documentation, medical documentation, country information for Mexico, and other evidence submitted in conjunction with Forms I-130 and I-601. The entire record was reviewed and considered in rendering this decision.

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...

The applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I).

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 record reflects that the applicant entered the United States without inspection in February 1998 and remained until December 1999, accumulating more than one year of unlawful presence. The applicant subsequently entered the United States without inspection in April 2000 and remained until December 2004. The applicant again entered the United States without inspection in May 2005 and remained until April 29, 2012. On appeal the applicant indicates there is a dispute as to the 1999 and 2004 dates referenced, but he provides no further detail or clarification.

On appeal the applicant asserts that he is eligible for a waiver as he is seeking a waiver prior to his re-entry to the United States rather than from within the United States, that he has never been ordered removed from the United States, and that 10 years have passed since his 1999 and 2004 departures. He asserts that he meets all the requirements, including having a qualifying relative in his U.S. citizen spouse, for whom he has shown extreme hardship due to separation from him; that

Mexico has poor country conditions including violence and problems with the economy, education, and medical care; and that he has positive discretionary factors including paying taxes, supporting his spouse and child, and having letters of support.

In a separate decision, we dismissed an appeal of the denial of the applicant's Application for Permission to Reapply for Admission into the United States (Form I-212) because the applicant is currently ineligible to seek permission to reapply. As we stated in that decision, 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 reflects, and the applicant does not dispute, that he returned to Mexico on April 29, 2012, and therefore he has not remained outside the United States for 10 years since his last departure. He is thus currently statutorily ineligible to apply for permission to reapply for admission. As he would remain inadmissible under section 212(a)(9)(C)(i) of the Act even if he were granted a waiver under section 212(a)(9)(B)(v) of the Act, no purpose would be served in adjudicating his waiver application at this time, and the appeal will be dismissed 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.