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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 3 1 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center. The application 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 readmission within 10 years of departure from the United States. The applicant is also inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having unlawfully reentered the United States after having been unlawfully present in the United States for an aggregate period of more than 1 year.[1] The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In a decision dated May 21, 2014, the Director concluded that the applicant was not eligible for admission to the United States as a result of her inadmissibility under section 212(a)(9)(C) of the Act, and as a result denied her application for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act as a matter of discretion.

On appeal, the applicant states that she only entered the United States without inspection on one occasion and she believes that she should not be subject to the inadmissibility at section 212(a)(9)(C)(i).

In support of the waiver application, the record includes, but is not limited to: letters from the applicant, documentation concerning the applicant's presence in Mexico in 2013, biographical information for the applicant's U.S. citizen sons, documentation concerning the applicant's son's medical care from 2010-2012 in the United States, and documentation of the applicant's immigration history.

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-
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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

[1] In regard to that ground of inadmissibility, the applicant concurrently filed an Application for Permission to Reapply for Admission (From I-212), which was denied by the Director, but that decision was not appealed by the applicant.

> 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
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> . . . .
>
> (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 of Homeland Security has consented to the alien's reapplying for admission.

The record reflects that the applicant was admitted to the United States on April 15, 1997 with a Border Crossing Card (BCC). The applicant states that she remained in the United States until May 2000, past the time lawfully allowed to her under the terms of her admission. During this period of time, the applicant accrued more than 1 year of unlawful presence. Although the record reflects that the applicant was admitted to the United States on June 5, 2000, again using her BCC, she departed the United States sometime before September 17, 2000, when she sought admission and was refused entry and allowed to voluntarily return to Mexico. The applicant did not remain in Mexico, but states that she reentered the United States without inspection in December 2000 and remained until June 2012. As a result of the applicant's unlawful entry into the United States in December 2000 after having previously accrued more than one year of unlawful presence (from the expiration of her authorized stay under her BCC until May 2000), she is inadmissible under

section 212(a)(9)(C)(i)(I) of the Act. The applicant is also inadmissible under section section 212(a)(9)(B)(i)(II) of the Act as a result of her two periods of unlawful presence of one year or more.

An applicant who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the applicant has been outside the United States for more than 10 years since the date of their 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). 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* the applicant has obtained consent to reapply for admission (Form I-212). In the present matter, the record reflects that the applicant last departed the United States in June 2012 and has not remained outside of the United States for a period of ten years. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. The appeal of the denial of the waiver application is therefore 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.