



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-S-

DATE: OCT. 20, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and a citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the waiver application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 and seeking admission within ten years of his last departure from the United States. The Director, in a decision dated June 30, 2014, also concluded that the Applicant was inadmissible pursuant to section 212(a)(9)(C), and therefore ineligible to request consent to reapply for admission because he had not remained outside the United States for ten years. The Applicant has two U.S. citizen children and three U.S. citizen stepchildren and is married to a U.S. citizen. The Applicant seeks a waiver of inadmissibility in order to reside in the United States with his family.

On appeal, the Applicant asserts he is not inadmissible under section 212(a)(9)(C) and provides evidence to demonstrate that he is only inadmissible under section 212(a)(9)(B) of the Act. The Applicant also asks us to find that his spouse would experience extreme hardship if the waiver was denied and to approve the waiver application.

The record contains, but is not limited to: briefs written on behalf of the Applicant; a statement from the Applicant; letters from the Applicant's employer, doctor, friends, family, and spouse; photographs; divorce documentation for the Applicant's spouse and information regarding her ex-spouse; medical documentation for two of the Applicant's children; proof of medical insurance; a statement from the Applicant's father; and articles regarding racism in Mexico. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(b)(6)

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(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.

The record reflects that the Applicant entered the United States without inspection in September 2006 and remained in the United States until November 2013. He therefore accrued over one year of unlawful presence between September 2006 and his departure in November 2013. He is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 and seeking admission within ten years of his departure from the United States. The Applicant does not contest this inadmissibility.

The record also indicates that, in his consular interview in [REDACTED] Mexico, on November 27, 2013, the Applicant stated that he attempted to enter the United States without inspection on May 1 and May 2, 2005, and then did enter the United States without inspection in May 2005, departing in August 2006. As a result, the Applicant was found inadmissible under section 212(a)(9)(C) of the Act, and his waiver application was denied as a matter of discretion. The Applicant asserts that he never stated that he lived in the United States from May 2005 through August 2006. The Applicant further indicates that he unsuccessfully attempted to enter the United States in 2005 twice but was granted voluntary return each time. In addition, the Applicant provides a letter from an employer in Mexico, a municipal secretary in [REDACTED] indicating that the Applicant worked for him from May 2005 through August 2006. The Applicant also provides a letter from his doctor in Mexico, who states that the Applicant was seen for three different illnesses on May 6, 2005, December 23, 2005, and August 18, 2006. The Applicant provides three additional letters of friends, who indicate that he lived in Mexico during the time period in question, May 2005 through August 2006.

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. It is also incumbent upon the Applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). We have considered the Applicant's statements and other evidence submitted on appeal. Nevertheless, we find that the record does not show clearly and beyond doubt that the Applicant was in Mexico during the period in question, as contradicted by the reported statement to the consular officer. The applicant is inadmissible under section 212(a)(9)(C) of the Act. As this inadmissibility cannot be waived, the Applicant will remain inadmissible and ineligible for an immigrant visa notwithstanding

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his waiver application. Therefore, we find no error in the Director's decision to deny the applicant's Form I-601 as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-S-*, ID# 10943 (AAO Oct. 20, 2015)