



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

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

MATTER OF J-E-E-V-

DATE: SEPT. 28, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and 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 application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant 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 more than one year. The Applicant was also found to be inadmissible under 212(a)(9)(C)(i)(I) of the Act, for entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States. The Applicant seeks a waiver of inadmissibility so that he may reside in the United States with his U.S. citizen spouse and children.

The Director noted that there was no waiver available to the Applicant based on his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act because he had not waited outside the United States for 10 years as required by law. The Applicant's Form I-601 was denied accordingly.

In support of the instant appeal, the Applicant submits a brief and supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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-
 - (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year...and again seeks admission within 3 years

of the date of such alien's departure or removal,
or

(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...

(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 first entered the United States without inspection in 2001. In 2004, the Applicant departed the United States. The Applicant subsequently re-entered the United States without inspection in April 2005. The record indicates that the Applicant departed the United States in or around June 2014. We concur with the Director that the Applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for unlawful presence. In addition, as the

Applicant re-entered the United States without being admitted in April 2005 after accruing unlawful presence of more than one year, the Applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

On appeal the Applicant maintains that he has received an approval of his Form I-601A, Application for Provisional Unlawful Presence Waiver and thus, his unlawful entries have been cured.

Section 212.7(e)(5) of Title 8 of the Code of Federal Regulations states in pertinent part:

(12) *Approval and conditions.* A provisional unlawful presence waiver granted under this section:

(i) Does not take effect unless, and until, the alien who applied for and obtained the provisional unlawful presence waiver:

(A) Departs from the United States;

(B) Appears for an immigrant visa interview at a U.S. Embassy or consulate; and

(C) Is determined to be otherwise eligible for an immigrant visa by a Department of State consular officer in light of the approved provisional unlawful presence waiver.

(ii) Waives the alien's inadmissibility under section 212(a)(9)(B) of the Act only for purposes of the application for an immigrant visa and admission to the United States as an immediate relative of a U.S. citizen pursuant to the approved immediate relative petition (Form I-130 or I-360) upon which the provisional unlawful presence waiver application was based.

(iii) Does not waive any ground of inadmissibility other than the grounds of inadmissibility under section 212(a)(9)(B)(i)(I) or (II) of the Act.

(13) *Validity.* Until the provisional unlawful presence waiver takes full effect as provided in paragraph (e)(12) of this section, USCIS may reopen and reconsider its decision at any time. Once a provisional unlawful presence waiver takes full effect as defined in paragraph (e)(12) of this section, the period of unlawful presence for which the provisional unlawful presence waiver is granted is waived indefinitely, in accordance with and subject to paragraph (a)(4) of this section.

(14) *Automatic revocation.* The approval of a provisional unlawful presence waiver is revoked automatically if:

(i) The consular officer determines at the time of the immigrant visa interview that the alien is ineligible to receive a visa under section 212(a) of the Act other than under section 212(a)(9)(B)(i)(I) or (II) of the Act;

(ii) The immigrant visa petition approval associated with the provisional unlawful presence waiver is at any time revoked, withdrawn, or rendered invalid but not otherwise reinstated for humanitarian reasons or converted to a widow or widower petition;

(iii) The immigrant visa registration is terminated in accordance with section 203(g) of the Act, and has not been reinstated in accordance with section 203(g) of the Act; or

(iv) The alien, at any time before or after approval of the provisional unlawful presence waiver or before an immigrant visa is issued, reenters or attempts to reenter the United States without being inspected and admitted or paroled.

As noted in the statutory language above, provisional unlawful presence waivers only waive inadmissibility under section 212(a)(9)(B) of the Act, for unlawful presence. Moreover, an approval of a provisional unlawful presence waiver is revoked automatically if the consular officer determines that the alien is ineligible to receive a visa other than under section 212(a)(9)(B)(i)(I) or (II) of the Act.

In the case at hand, the Applicant is inadmissible pursuant both to section 212(a)(9)(B) of the Act for unlawful presence and section 212(a)(9)(C)(i)(I) of the Act for unlawful entry to the United States after having accrued unlawful presence of more than one year, as outlined in detail above. The Applicant's provisional unlawful presence waiver has thus been automatically revoked.

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. In the present matter, the Applicant's last departure was in or around June 2014. 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.

Matter of J-E-E-V-

ORDER: The appeal is dismissed.

Cite as *Matter of J-E-E-V-*, ID# 13274 (AAO Sept. 28, 2015)