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

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

MATTER OF A-A-S-

DATE: MAR. 15, 2016

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 (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

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 and again seeking admission within 10 years of her last departure from the United States and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The Applicant was also found to be inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for being unlawfully present in the United States after previous immigration violations. The Applicant is married to a U.S. citizen and seeks a waiver of inadmissibility to reside in the United States with her spouse and her lawful permanent resident mother.

In a decision dated June 5, 2015, the Director determined that as the Applicant was inadmissible under section 212(a)(9)(C)(i) of the Act for having reentered the United States without inspection after one year or more of unlawful presence, she required consent to reapply for admission. The Director further determined that the Applicant was not eligible to request consent to reapply for admission because 10 years have not elapsed since the date of her last departure from the United States and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion.

On appeal the Applicant contends that her waiver application was denied in error because a Form I-212, Application for Permission to Reapply for Admission in the United States After Deportation or Removal, is an independent application, and a standard of extreme hardship should be applied to determine her eligibility for a waiver of inadmissibility. With the appeal the Applicant submits a statement and a copy of information received from the U.S. Consulate in [REDACTED] Mexico. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent part:

(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, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, 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.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

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 . . . 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.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act states, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--

- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

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

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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 Applicant was found to have entered the United States without inspection as an infant and remained in the United States until her departure in April 2007. The record reflects that the Applicant's date of birth is [REDACTED] and she thus accrued unlawful presence of more than one year after becoming [REDACTED] years of age. The Applicant was also found to have been convicted of a crime involving moral turpitude. The Applicant has not disputed these findings of inadmissibility.

The record establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act as she departed in April 2007 after accruing more than one year of unlawful presence and then re-entered the United States without inspection on July 17, 2007. An individual who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the individual has been outside the United States for more than 10 years since the date of 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 U.S. Citizenship and Immigration Services has consented to the applicant's reapplying for admission. In the present matter, the record indicates that the Applicant's last departure from the United States was on January 5, 2012, less than 10 years ago. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of A-A-S-*, ID# 15771 (AAO Mar. 15, 2016)