U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-D-C-H-M-

DATE: NOV. 30, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Honduras, seeks a waiver of inadmissibility for unlawful presence and fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. However, the Applicant was also found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year and seeks permission to reapply for admission into the United States. *See* the Act section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). Permission to reapply for admission to the United States is an exception to this inadmissibility, which USCIS may grant in the exercise of discretion for those who seek admission after residing abroad for 10 years following their last departure.

The Director, Nebraska Service Center, denied the Applicant's waiver application, concluding that no purpose would be served in approving the application because the Applicant was ineligible to apply for permission to reapply for admission until she remained outside the United States for 10 years after October 2014, the date of her last departure. During this time, the Applicant had a Form I-601A provisional waiver approved for her unlawful presence inadmissibility. We dismissed a subsequent appeal, finding the Applicant's claim that she only entered the United States without inspection once, in 2000, not to be supported by the record and concluding that in accordance with section 212(a)(9)(C)(ii), she was ineligible to apply for consent to reapply for admission until she remained outside the United States for 10 years. We also stated that because the consular office found the Applicant inadmissible on other grounds, her Form I-601A, provisional waiver of her inadmissibility for unlawful presence, was revoked.

The matter is now before us on a combined motion to reopen and reconsider. In the motion, the Applicant submits new documentation and states that she is not subject to section 212(a)(9)(C) of the Act because the first and only time she entered the United States without inspection was in 2000, she lied about her other entry without inspection in 1998, and she is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting her 1998 entry to gain the benefit of Temporary

Protected Status. She presents documentation of her residence in Honduras in support of these statements.

We will deny the motion. The waiver application is denied as a matter of discretion.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence, specifically for accruing more than one year of unlawful presence. Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay 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 if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

However, the Applicant has also been found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year. *See* Section 212(a)(9)(C)(i)(I) of the Act.

Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any "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."

II. ANALYSIS

The issue on motion concerns whether the Applicant entered the United States in 1998 without inspection and accrued unlawful presence prior to her entry without inspection in 2000, thus making her inadmissible under section 212(a)(9)(C) of the Act. The Applicant claims that she lied on previous immigration applications when she stated that she entered the United States in 1998 and, as a result of this misrepresentation, she is inadmissible under section 212(a)(6)(C)(i) of the Act, but not inadmissible under section 212(a)(9)(C) of the Act. The Director stated that the evidence indicated that the Applicant entered the United States without inspection in 1998, and we found that the Applicant was ineligible for a waiver of her inadmissibility for unlawful presence because she was barred from admission for 10 years without the possibility of a waiver under section 212(a)(9)(C) of the Act. On motion, the Applicant claims she could not have entered the United States in 1998 because she was residing in Honduras during this time period. We find the record to

support the finding that the Applicant is inadmissible under section 212(a)(9)(C) of the Act and is not eligible to apply for a waiver of inadmissibility.

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(C) of the Act for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year, specifically entering the United States without inspection in 1998, residing in the United States unlawfully for an aggregate period of more than one year, and reentering the United States without inspection in 2000. The Applicant's last departure from the United States was in October 2014. The Act makes clear that a foreign national seeking admission must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act; *see also* section 240(c)(2)(A) of the Act.

On motion, the Applicant submits numerous medical documents and public records to establish where she was residing from the time period between 1996 and 2000. However, the Applicant has also consistently asserted over a period of 10 years that she entered the United States without inspection in November 1998, returned to Honduras in March 2000, and re-entered the United States later that year.

The documents included with the Applicant's motion indicate that the Applicant was residing in Honduras from 1996 to 1998, placing her in Honduras in November 1998 to vote in her town's mayoral election. Other documentation, including medical records, a police complaint, and a baptismal certificate, place the Applicant in Honduras at various times in 1999 and 2000. However, these documents do not establish a continuous residence in Honduras nor do they establish she did not enter the United States in 1998 and accrue one year of unlawful presence before her entry in 2000. Weighing the documentation submitted on motion together with the previous statements made by the Applicant regarding her entries and residence in the United States, we find that she has not shown clearly and beyond doubt that she did not enter the United States without inspection after accruing unlawful presence in the United States for an aggregate period of more than one year. Thus, because the Applicant is not eligible to apply for permission to reapply admission until October 2024, 10 years after her 2014 departure from the United States, no purpose would be served in adjudicating her waiver application. Therefore, the Applicant's waiver application will be denied as a matter of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. The motion to reopen and reconsider is denied. The application is denied as a matter of discretion.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of D-D-C-H-M-*, ID# 122867 (AAO Nov. 30, 2016)