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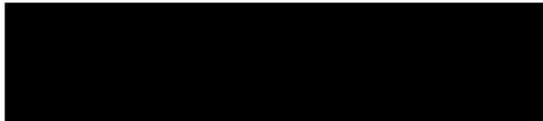
U.S. Department of Homeland Security  
20 Mass Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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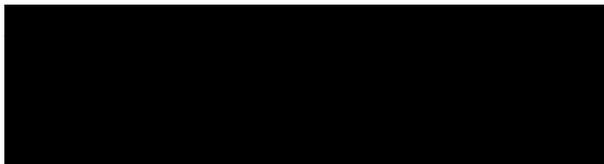


FILE: [REDACTED] Office: LOS ANGELES Date: FEB 13 2007

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year. The applicant is the son of a naturalized U.S. citizen and the father of a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States with his father and child.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen father. The application was denied accordingly. *Decision of the District Director*, dated February 17, 2005.

On appeal, counsel contends that the applicant should be granted a waiver because he has established that his father would experience extreme hardship. See *Applicant's Brief*, dated March 15, 2005. In support of the appeal, counsel submitted the referenced brief, an affidavit from the applicant's father, medical documentation for the applicant's father and a death certificate for the applicant's mother. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9)(B) 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, voluntarily departed the United States . . . 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, . . . is inadmissible.

(v) Waiver. - The Attorney General [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.

The record reflects that, on February 6, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his father. On January 9, 2002, the applicant appeared at Citizenship and Immigration

Services' (CIS) Los Angeles, District Office. The applicant testified that he had, in March 1990, entered the United States without inspection. He testified further that he had remained in the United States with the exception of a visit to Mexico in 1997 to 1998. He testified that he left the United States in December 1997 and returned to the United States in February 1998. The applicant has not departed the United States since that date.

The applicant accrued unlawful presence from April 1, 1997, the date on which unlawful presence provisions were enacted, until December 1997, the date on which he last departed the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure.

An application for admission or adjustment is a "continuing" application adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). There has been no final decision made on the applicant's Form I-485, so the applicant, as of today, is still seeking admission by virtue of adjustment under section 245(i) of the Act. The applicant's last departure occurred in December 1997. It has been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. He, therefore, does not require a waiver of inadmissibility, so the decision of the district director will be withdrawn and the waiver application will be declared moot. Finally, the AAO notes that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act because, at the time the Form I-601 was adjudicated, it had been more than three years since the applicant's departure.

**ORDER:** The appeal is dismissed, the prior decision of the district director is withdrawn and the application for waiver of inadmissibility is declared moot.