



U.S. Citizenship  
and Immigration  
Services

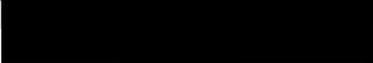
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HB

FILE:



Office: CIUDAD-JUAREZ, MEXICO

Date: MAY 30 2007

(CDJ 2004 659 277 RELATES)

IN RE:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer in Charge, Ciudad-Juarez, Mexico, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the decision of the officer in charge will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who is 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 married to a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The officer in charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated October 7, 2005.

On appeal, counsel contends that the officer in charge erred in concluding that the hardships described by the applicant's spouse did not constitute extreme hardship. Counsel contends that the officer in charge failed to evaluate the hardships either individually or cumulatively. *Counsel's Brief*, dated November 16, 2005. In support of his assertions, counsel only submits the above-referenced brief. The entire record was reviewed and considered in rendering a decision.

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.

In the present application, the record indicates that the applicant entered the United States without inspection on May 12, 2002 and remained unlawfully in the United States. On November 23, 2002, the applicant returned to Mexico where she has since resided.

The applicant accrued unlawful presence from May 12, 2002, the date on which she unlawfully entered the United States, until November 23, 2002, the date on which she returned to Mexico. 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 her departure.

An application for admission or adjustment is a "continuing" application adjudicated based on 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 Application for Immigrant Visa and Alien Registration (Form DS-230), so the applicant, as of today, is still seeking admission by virtue of her immigrant visa application. The applicant's departure causing the applicant's inadmissibility pursuant to section 212(a)(9)(B)(i)(I) of the Act occurred on November 23, 2002. It has been more than three years since the departure that made the inadmissibility issue arise in her application. A clear reading of the law reveals that the applicant is no longer inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. She, therefore, does not require a waiver of inadmissibility, so the decision of the officer in charge will be withdrawn and the waiver application will be declared moot.

**ORDER:** The appeal is dismissed, the decision of the officer in charge is withdrawn, and the application for waiver of inadmissibility is declared moot.