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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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#13

FILE:

Office: CIUDAD JUAREZ, MEXICO

Date: NOV 15 2007

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 waiver application was denied by the Officer-in-Charge (OIC), Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant, a citizen of Mexico, was found inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days, but less than one year. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and rejoin his wife.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife will suffer extreme hardship if the applicant is required to remain in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part, the following:

(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 . . . and again seeks admission within 3 years of the date of the 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that he entered the United States, without inspection, in February 2003. He did not depart until November 2003. As he departed the United States more than 180 days, but less than one year, after his entry without inspection, the three-year bar on admission was triggered.

As the applicant sought admission within three years of her November 2003 departure from the United States, he was inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act at the time the waiver application was filed. The applicant did not contest the director's finding of inadmissibility; he filed for a waiver of his inadmissibility.

The applicant departed the United States in November 2003. The AAO notes that, at the time the OIC issued his decision on November 18, 2005, the applicant was still inadmissible and in need of a waiver in order to enter the United States, as three years had not yet passed since his departure. However, at this time his three-year bar on admission no longer applies, as more than three years have passed since November 2003. The applicant is no longer inadmissible under section 212(a)(2)(A)(9)(B)(i)(I) of the Act and, therefore, the Form I-601 is moot. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether her husband has established extreme hardship under section 212(a)(2)(A)(9)(B)(v) of the Act. Accordingly, the appeal will be sustained.

ORDER: The appeal is dismissed as the waiver application is moot.