



U.S. Citizenship  
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Services

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FILE:

[REDACTED]

Office: ATLANTA, GA

Date:

001 03 2006

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[REDACTED]

PUBLIC COPY

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 District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Mexico. On January 2, 2004, the district director denied the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status. Counsel asserts that the appeal is not premised on the denial of the Form I-485, rather it is based on the presumed denial of a previously submitted Form I-601, Application for Waiver of Grounds of Inadmissibility. *Letter from Counsel*, dated January 5, 2004. There is no legal basis for counsel's contention that an appeal may be filed on a "presumed" denial of an application. In addition, as there is no evidence of a denied Form I-601 at the time of the applicant's appeal, there is no basis for the appeal.<sup>1</sup> Therefore, the appeal is rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> The AAO notes that the Form I-601 was subsequently denied on June 9, 2004. The denial cited section 212(a)(9)(B)(v) of the Act, the waiver provision for section 212(a)(9)(B) of the Act which states in subsection (i)(II) that, "Any alien . . . 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 such alien's departure or removal from the United States, is inadmissible." However, the applicant is not inadmissible under this section as there is no evidence that he has departed the United States since his arrival. The director gave no justification for this finding. In addition, the Form I-601 lists "INA 212(a)(6)(C) Entered Without Inspection" as the ground of inadmissibility. The AAO notes that section 212(a)(6)(A) of the Act deals with entry without inspection and there is no waiver of this section. The AAO finds no ground of inadmissibility waived by the filing of an I-601.