



U.S. Citizenship
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APR 12 2007

FILE: [REDACTED]
(CDJ2003 618 022 RELATES)

Office: CIUDAD JUAREZ, MEXICO Date:

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:

SELF-REPRESENTED

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, Ciudad Juarez, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant is a native and citizen of Mexico who applied for a waiver under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). The applicant was found to be inadmissible to the United States pursuant to 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 more than 180 days but less than one year. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated September 26, 2005.

On appeal, the applicant, through his spouse, asserts that since his return to Mexico life has been very hard for her and that being separated is emotionally destroying. *Form I-290B and attached statement*.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; a photocopy of the U.S. birth certificate of the applicant's spouse; and a photocopy of the applicant's marriage certificate. The entire record was reviewed and considered in rendering this 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 in May 2002 and remained in the United States until he voluntarily departed in December 2002. *Optional*

Form 194. The applicant accrued unlawful presence from May 2002 until December 2002. The applicant is therefore 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 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 is barred from again seeking admission within three years of the date of his departure.

The applicant's departure from the United States occurred in December 2002. Therefore, it has been more than three years since the departure that raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible based on his prior unlawful presence as he is not seeking admission within three years of his initial departure. Based on the current facts, he does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is moot.

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