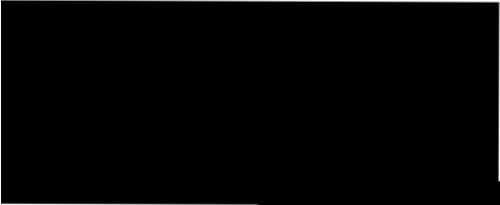




U.S. Citizenship  
and Immigration  
Services

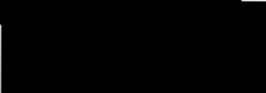
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invasion of personal privacy

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FILE:



Office: FRANKFURT, GERMANY

Date:

**JUL 02 2008**

IN RE:

Applicant:



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), Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under 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), thus the relevant waiver application is moot.

The applicant is a native and citizen of Germany 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 1 year. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the OIC, dated May 18, 2006.* The applicant submitted a timely appeal.

The AAO will first consider the finding of inadmissibility.

Section 212(a)(9)(B)(i)(I) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been 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 such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The record reflects that the applicant entered the United States on a B1/B2 visa on March 31, 2004. She was admitted for six months, but remained in the United States until she voluntarily departed on April 26, 2005. Thus, she was unlawfully present in the United States for a period of more than 180 days but less than 1 year.

As previously stated, section 212(a)(9)(B)(i)(I) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for a period of more

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<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

<sup>2</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

than 180 days but less than 1 year, voluntarily departed the United States and again seeks admission within 3 years of the date of such alien's departure or removal, is inadmissible.

Based on the documentation in the record, it has been more than three years since the applicant's voluntary departure from the United States on April 26, 2005. The AAO therefore finds that the applicant is not inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act. The waiver filed pursuant to section 212(a)(9)(B)(v) of the Act is therefore moot. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

**ORDER:** The May 18, 2006 decision of the OIC is withdrawn. The appeal is dismissed as the underlying application is moot.