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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

FILE: Office: PHOENIX, ARIZONA Date: MAR 11 2004

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of more that one year. The applicant is the beneficiary of an approved Petition for Alien Relative. She seeks the above waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to remain in the United States and reside with her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The decision was affirmed by the AAO on appeal. *See AAO decision,* dated May 9, 2003

The record indicates that the applicant entered the United States without inspection in September 1993. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on June 1, 1998 based on an approved Petition for Alien Resident. The record further reflects that an I-512, Authorization for Parole of an Alien into the United States (I-512), was issued to the applicant on October 12, 2000. The applicant departed the United States on an unknown date after the issuance of the I-512 and was paroled into the United States on October 15, 2000. It was this departure to Mexico that triggered her unlawful presence.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (Secretary)] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until June 1, 1998, the date of her proper filing of the Form I-485. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

In the motion to reconsider, the applicant asserts that she did not understand the future inadmissibility consequences when she was granted advance parole in order to travel to Mexico to visit her sick father. The advance parole document, which was issued to the applicant, included the following notification.

> "Notice to Applicant: Presentation of this authorization will permit you to: resume your application for adjustment of status upon your return to the United States. If your adjustment application is denied, you will be subject to removal proceedings under section 235(b)(1) or 240 or the Act. If, after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the processing of your application. If you are found inadmissible, you will need to qualify for waiver of inadmissibility in order for your adjustment of status to be approved."

Based on the above, the applicant's assertion that she was not warned about her inadmissibility is unsubstantiated.

The applicant states that her spouse would suffer extreme hardship if her waiver application was not approved. The applicant made no other assertions in her motion to reopen/reconsider and no new information or evidence was submitted.

8 C.F.R. § 103.5(a) states in pertinent part:

> (a) Motions to reopen or reconsider. . .
>
> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.
>
> (3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.
>
> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the district director and the AAO in their prior decisions. The applicant in this case failed to provide any new documentation or set forth any new facts to be proved. The applicant also failed to identify or state any erroneous conclusions of law or statements of fact in her motion. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of May 9, 2003, dismissing the appeal is affirmed.