U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ Date: NOV 04 2009

IN RE: [redacted]

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

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.

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn, and the application declared moot. The matter will be returned to the officer in charge for continued processing.

The record reflects that the applicant is a native and citizen of Mexico who 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 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 reside with his lawful permanent resident father in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated November 14, 2006.

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.

The record shows that the applicant entered the United States in May 2001, when he was sixteen years old, without inspection. On April 30, 2003, he acquired V-3 status which expired on April 29, 2005. He remained in the United States until November 2005. Therefore, the applicant accrued unlawful presence from June 2, 2002, when he turned eighteen years old, until April 30, 2003, when he obtained V-3 status. The applicant again accrued unlawful presence from April 30, 2005, when his V-3 status expired, until his departure in November 2005. The applicant thus accrued unlawful presence of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure.

The applicant's last departure occurred in 2005. It has now been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible.

ORDER: The appeal is dismissed, the prior decision of the officer in charge is withdrawn, and the application for a waiver of inadmissibility is declared moot. The matter will be returned to the officer in charge for continued processing.