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U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2002 684 141

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is no longer inadmissible under section 212(a)(9)(B)(i), of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), thus the relevant waiver application is moot. The matter will be returned to the district director for continued processing.

The applicant, [redacted], is a 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 more than one year.[1]

The applicant's spouse, [redacted] is naturalized citizen of the United States. 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), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 6, 2006. The applicant filed a timely appeal.

On appeal, counsel states that the director misapplied the extreme hardship standard, abused his discretion as his decision lacked a rational basis, and failed to consider the totality of the hardship factors.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9) of the Act. That section provides, in 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 . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

[1] The district director was incorrect in finding the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

(II) 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.

. . . .

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in December 2000 and remained until February 2005. The applicant turned 18 years of age on April 7, 2004. The applicant accrued 300 days of unlawful presence from April 7, 2004 until February 1, 2005, and triggered the three-year-bar when she left the country, which rendered her inadmissible under section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(I), for three years. It has now been more than three years. The applicant is no longer inadmissible to the United States under 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 August 17, 2006 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot. The director shall reopen the denial of the Form I-601 waiver application on motion and continue to process the adjustment application.