identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

[redacted]

H2

FILE: [redacted] Office: CIUDAD JUAREZ Date: OCT 28 2009

(CDJ 2011 231 986)

IN RE: [redacted]

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 PETITIONER:

[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.

Perry Rhew
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 The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Mexico who entered the United States in February 2002 without inspection and remained until October 2005. He 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 one year. The applicant is the stepson of a U.S. Citizen and the derivative beneficiary of an approved Petition for Alien Fiancé(e) and seeks a waiver of inadmissibility in order to return to the United States and reside with his mother and stepfather.

The officer in charge found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge* dated February 16, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in applying precedent decisions that do not apply to the present case and in failing to consider the statements of extreme hardship submitted with the waiver application. The entire record, including statements prepared by the applicants' mother and stepfather, was reviewed and considered in arriving at a decision on the appeal.

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.
> >
> > . . . .
> >
> > (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).
>
> ....
>
> (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 case, the record indicates that the applicant entered the United States without inspection in February 2002 and was unlawfully present in the United States from November 23, 2004, when he turned eighteen, to October 2005, when he returned to Mexico, a period greater than 180 days, but less than one year. The applicant's last departure occurred in 2005, and since it has now been more than three years since that departure the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

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.