U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JAN 09 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, CA, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted], is a native and citizen of Mexico who first entered the United States in about April 1989. She is the beneficiary of an approved I-130 Petition for Alien Relative filed on her behalf by her U.S. citizen (USC) daughter, [redacted] She was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, (the Act) 8 U.S.C. § 1182(a)(9)(B), for having accrued more than one year of unlawful presence in the United States, departing, and seeking readmission within 10 years of such departure. In order to remain in the United States with her USC daughter, Mrs. [redacted] seeks a waiver of inadmissibility under section 212(a)(9)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v).

The record reflects that Mrs. [redacted] first entered the United States without inspection in about April 1989. She stayed and lived in the United States in unlawful status. On August 15, 1999, she departed the United States for Mexico and reentered the United States without inspection on September 5, 1999. As a result of her unlawful presence, departure, and seeking admission within 10 years of her departure, the district director found Mrs. [redacted] inadmissible. *District Director's decision, dated May 5, 2005.* The district director also found that the applicant failed to establish that she had a qualifying relative upon whom extreme hardship would be imposed and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, Mrs. [redacted] asserts that she is eligible to adjust her status to lawful permanent resident pursuant to section 245(i) of the Act because she has an approved Form I-130 Family Relative Petition filed on her behalf by her adult USC daughter; because she entered the United States without inspection; because she was present in the United States on December 21, 2000; and because she properly filed the Form I-485 Application to Adjust Status. Mrs. [redacted] met all of the criteria that allowed her to file her Form I-485 in the United States, rather than having to travel to Mexico to apply for an immigrant visa at the U.S. Embassy, but triggered the unlawful presence bar at section 212(a)(9)(B)(i)(II), when she departed the United States after accruing more than one year of unlawful presence. This departure rendered her inadmissible, and because she does not have any qualifying relatives, ineligible for a waiver under section 212(a)(9)(B)(v). Section 245(i) does not excuse unlawful presence under section 212(a)(9)(B).

Section 212(a)(9)(B) of the Act provides, in relevant part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > > (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.
> >
> > (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.

Emphasis Added.

As a preliminary matter, the AAO notes that the record does not contain a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative. The G-28 in the file is signed by Columba A. Sandoval, from the organization One Step to Immigration. Ms. [redacted] does not appear to be authorized and qualified to represent Mrs. [redacted] before the AAO, as she does not indicate that she is attorney or an accredited representative. Thus, the applicant is considered self-represented and the AAO will not be sending a duplicate of this decision to Ms. [redacted]

Mrs. [redacted] Mrs. [redacted] accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 15, 1999, the date of her departure from the United States. She 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. Pursuant to section 212(a)(9)(B)(i)(II), she is barred from again seeking admission within 10 years of the date of her departure.

In order to be eligible for a waiver of this ground of inadmissibility, Mrs. [redacted] must show that the bar to admission would result in extreme hardship to a USC or lawful permanent resident (LPR) spouse or parent. Hardship the applicant herself experiences upon denial of her application for admission is not considered in section 212(a)(9)(B)(v) waiver proceedings. Direct hardship to her USC or LPR children is also not considered. None of Mrs. [redacted] children is a qualifying relative for purposes of this waiver. Mrs. [redacted] is not married to a USC or LPR and does not have a USC or LPR parent. Therefore, Mrs. [redacted] does not have a qualifying relative upon which to base a waiver application.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.