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

H3

[redacted]

FILE: [redacted] Office: SEATTLE, WA (SPOKANE) Date: MAR 30 2007

IN RE: [redacted]

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

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Seattle, Washington and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant is a native and citizen of Mexico who applied for a waiver under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). The applicant 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 is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The District Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director,* dated May 10, 2005.

On appeal, the applicant asserts that the District Director erred in finding that that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relatives necessary for a waiver. *Form I-290B.*

In support of these assertions the record includes, but is not limited to, statements from the applicant and his spouse; tax statements for the applicant and his spouse; a police report for the applicant; an employment letter for the applicant; and bank statements for the applicant and his spouse. The entire record was reviewed and considered in rendering this decision.

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.
> >
> > (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 application, the record indicates that the applicant entered the United States without inspection on July 20, 1996. *Form I-213, Record of Deportable Alien.* Immigration officials apprehended the applicant on February 23, 1998 after the police had stopped him for traffic violations. *Id.; See also police report,* dated February 23, 1998. The applicant voluntarily returned to Mexico in February 1998. *Form I-485.* He returned to the United States in April 1998. *Id.*

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until February 1998, when he departed the United States. The applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for being unlawfully present in the United States for a period 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 departure from the United States occurred in February 1998. Therefore, it has been more than three years since the departure that raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible as he is not seeking admission (in this case, through his Form I-485 application) within 3 years of his initial departure. Based on the current facts, he does not require a waiver of inadmissibility based on his prior unlawful presence. The appeal will be dismissed as the waiver application is moot.

ORDER: The appeal is dismissed as the waiver application is moot.