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

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FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JAN - 2 2009

CDJ 2004 751 414

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:

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot. The matter will be returned to the district director for notification of the U.S. Consulate with jurisdiction over the applicant's immigrant visa application.

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)(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 and seeking readmission within ten years of her last departure from the United States. The applicant is the wife of a U.S. citizen. She seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her family.

The applicant's husband, [redacted], filed a Petition for Alien Relative (Form I-130) on the applicant's behalf that was approved on August 11, 2004. The applicant's subsequent Application for Immigrant Visa and Alien Registration (Form DS-230), filed at the U.S. Consulate in Ciudad Juarez, Mexico, was refused on November 1, 2005, based upon her being inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) on November 28, 2005.

The district director found that the record failed to establish that the applicant's spouse would suffer hardship beyond that normally experienced as a result of the removal of a family member. He denied the waiver application accordingly. *Decision of the District Director,* dated July 7, 2006.

On appeal, two documents are submitted with the Notice of Appeal to the Administrative Appeals Office (Form I-290B). They are: (1) a letter from the applicant's husband, dated August 3, 2006; and (2) a July 12, 2006 letter from a physician, [redacted] The appeal asserts that the financial, emotional, and health consequences of the applicant's absence from the United States are causing Mr. extreme hardship.

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. The unlawful presence provisions of the Act became effective as of April 1, 1997. As defined in section 212(a)(9)(B)(ii) of the Act, an alien is deemed to be unlawfully present in the United States if:

> The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

The record indicates that the applicant entered the United States without inspection in 1986 and remained in the United States until her voluntary departure to Mexico in September 1998. She acknowledged these facts during her November 1, 2005 interview by a Department of State consular officer at the U.S. Consulate in Ciudad Juarez regarding her application for an immigrant visa. Therefore, the AAO finds that the applicant accrued unlawful presence from April 1, 1997, the effective

date of the unlawful presence provisions of the Act, until she departed the United States, a period of more than one year.

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

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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 [now the Secretary of Homeland Security (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.

At the time she filed the Form DS-230 in 2005, the applicant was seeking admission to the United States within ten years of her September 1998 departure and was, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The AAO notes, however, that, as of the date of its decision on this appeal, more than ten years have passed since the applicant's departure from the United States. A clear reading of the law reveals that the applicant is no longer inadmissible based on her prior unlawful presence, as the ten-year period for which she was barred from admission has passed. Therefore, based on the current facts, she does not require a waiver of inadmissibility, and the appeal will be dismissed as the waiver application is moot.

ORDER: The appeal is dismissed as the waiver application is moot because the ten-year period for which the bar to admission was in effect against this applicant has passed. The district director should notify the U.S. Consulate with jurisdiction over the applicant's immigrant visa application that the applicant is no longer inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.