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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

[redacted]

#6

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JUN 02 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), and the waiver application is therefore moot. The district director shall notify the appropriate consular official that the applicant is not inadmissible to the United States.

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 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 has a U.S. citizen father and seeks a waiver of inadmissibility in order to reside in the United States.

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 and the application was denied accordingly. *Decision of the District Director*, at 4 dated October 19, 2007.

On appeal, the applicant's father details the hardship that he is experiencing without the applicant. *Form I-290B*, at 2, dated November 10, 2007.

The record includes, but is not limited to, the applicant's Form I-290B, the applicant's father's statement and a school letter. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in October 1993 and voluntarily departed the United States in January 1999. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until January 1999, when she departed the United States. The applicant was found to be 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 and seeking readmission within ten years of her January 1999 departure.

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-
> >
> > . . . .
> >
> > (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.

The applicant's last departure from the United States occurred on January 1999. Therefore, it has been more than ten years since the departure that raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible based on her prior unlawful presence as she is not seeking admission within ten years of her last departure from the United States. As such, she does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is no longer required.

ORDER: The appeal is dismissed as the applicant is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, and the waiver application is therefore moot. The district director shall notify the appropriate consular official that the applicant is not inadmissible to the United States.