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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 (CIUDAD JUAREZ) Date: MAR 16 2010

(CDJ 2005 841 327 relates)

IN RE: Applicant: [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 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.

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the AAO on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

Pursuant to the record, the applicant, a native and citizen of Mexico, entered the United States without inspection in May 2003 and did not depart the United States until July 2005. Based on this finding, the applicant was deemed 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated March 13, 2007.

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 commencement of proceedings...and again seeks admission within 3 years of the date of such alien's departure or removal...is inadmissible.
> >
> > (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.

The record establishes that on March 31, 2004, the applicant filed a Form I-130, Petition for Alien Relative (Form I-130) and a concurrent Form I-485, Application to Register Permanent Resident or Adjust Status (Form I-485). The applicant subsequently departed the United States in July 2005 and the Form I-485 was denied due to abandonment on June 30, 2008. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act,* dated May 6, 2009. As such, the applicant accrued unlawful presence from May 2003 until March 31, 2004, the date of her proper filing of the Form I-485.

As noted above, the applicant accrued unlawful presence from May 2003 until her Form I-485 filing in March 2004. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act 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 is barred from again seeking admission within three years of the date of her departure.

As the record establishes, the applicant's last departure occurred in July 2005. It has now been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible under section (212)(a)(9)(B) of the Act.[1]

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared moot.

[1] The AAO notes that subsequent to the decision of the district director, dated March 13, 2007, the applicant was ordered removed in absentia on July 22, 2009. *Decision of the Immigration Judge,* dated July 22, 2009. Although the AAO finds that the applicant is not inadmissible under section 212(a)(9)(B) of the Act, for unlawful presence, as detailed above, the district director will need to determine how the removal order in absentia from July 2009 affects her inadmissibility at this time.