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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

H6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

NOV 18 2010

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:

[redacted]

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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in June 1983 and did not depart the United States until June 2000. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in June 2000. The applicant was thus 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. The applicant is seeking a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and U.S. citizen children.

The acting 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 Acting District Director,* dated June 4, 2008.

On appeal, counsel for the applicant submitted the Form I-290B, Notice of Appeal (Form I-290B), dated June 18, 2008, an attachment to the Form I-290B, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

> 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 AAO concurs with the acting district director that the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act, for unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in June 2000. Pursuant to section 212(a)(9)(B)(i)(II), the applicant is barred from again seeking admission within ten years of the date of her departure.

As the record establishes, the applicant's last departure occurred in June 2000. It has now been more than ten years since the departure that made the applicant inadmissible. A clear reading of the law reveals that the applicant is no longer inadmissible pursuant to section 212(a)(9)(B) of the Act.

ORDER: The appeal is dismissed as the application for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is declared moot.