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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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Services

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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: **AUG 11 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

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

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)(I) of the Immigration and Nationality Act (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, and seeking readmission within three years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States as a permanent resident pursuant to an approved Form I-130 relative petition filed on his behalf.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated June 12, 2006.

On appeal, the applicant explains that his parents and siblings are residing in the United States and that he will experience hardship if he cannot join them. *Statement from the Applicant on Form I-290B*, dated June 22, 2006. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that the applicant entered the United States without inspection in March 2004 and he remained until November 2004. Thus, he accrued approximately eight months of unlawful presence in the United States. He now seeks reentry pursuant to an approved Form I-130 relative petition filed on his behalf. Accordingly, he was found inadmissible under section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for more than 180 days, but less than one year, and seeking readmission within three years of his last departure.

The record further reflects that the applicant was present in the United States without a legal status from March 2003 to November 2003. However, as he was under the age of 18 during this period he did not accrue unlawful presence for the purpose of determining inadmissibility under section 212(a)(9)(B)(i) of the Act. Section 212(a)(9)(B)(iii) of the Act.

Upon review, pursuant to section 212(a)(9)(B)(i)(I) of the Act the applicant was barred from seeking admission to the United States within three years of the date of his last departure. As he last departed in November 2004, he was barred from seeking admission until November 2007. As November 2007 has passed, and the record does not show that the applicant has been in the United States since November 2004, he is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. The record does not show that the applicant is inadmissible based on other grounds. Accordingly, he does not require a waiver of inadmissibility and the present application for a waiver will be declared moot.

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