



U.S. Citizenship
and Immigration
Services

H2

[Redacted]

DEC 07 2009

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

IN RE: [Redacted]

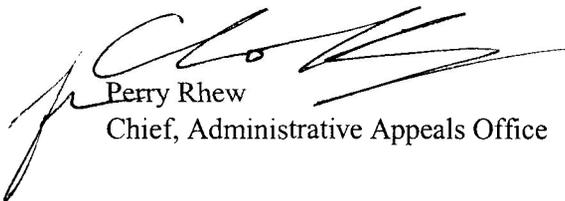
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[Redacted]

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.


Perry Rhew
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)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her 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 her 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 December 1, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will experience extreme hardship if the applicant is not permitted to reside in the United States. *Statement from Counsel*, dated December 8, 2006. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 record indicates that the applicant entered the United States without inspection in or about 1993 and she remained until January 1999. Thus, she accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until January 1999, totaling over one year. She now seeks reentry pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. Accordingly, she was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure.

Upon review, pursuant to section 212(a)(9)(B)(i)(II) of the Act the applicant was barred from seeking admission to the United States within ten years of the date of her last departure. As she last departed in January 1999, she was barred from seeking admission until January 2009. As January 2009 has passed, and the record does not show that the applicant has been in the United States since January 1999, she is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record does not show that the applicant is inadmissible based on other grounds. Accordingly, she does not require a waiver of inadmissibility and the present application for a waiver will be declared moot. As such, the applicant is free to apply for an immigrant visa pursuant to the approved Form I-130 relative petition filed on her behalf.

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