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U.S. Citizenship  
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**NOV 04 2009**

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)  
CDJ 2004 739 408 (RELATES)

Date:

IN RE: [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.

for 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 Administrative Appeals Office (AAO) on appeal. The decision of the District Director will be withdrawn, the applicant's waiver application declared moot, the appeal dismissed, and the matter returned to the District Director for further processing of the visa application.

The applicant, [REDACTED], is a native and citizen of Mexico. He 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 in the United States for more than one year and seeking admission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), in order to return to the United States to join his U.S. citizen spouse and children.

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant's spouse indicated that he would submit a brief and/or evidence within 30 days of filing the Notice of Appeal (Form I-290B). The applicant's Form I-290B was filed on September 25, 2006. As of the date of this decision, the applicant has not submitted a brief or any additional evidence. **Therefore the record will be considered complete.** In support of the application, the record contains, but is not limited to, a letter from the applicant's wife and copies of their children's birth certificates. 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:

(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 [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 reflects that the applicant entered the United States without inspection in 1989 or 1990. The applicant remained in the United States until departing on April 11, 1998. The director found that the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 11, 1998, when the applicant voluntarily departed the United States. Therefore, the applicant accrued unlawful presence in the United States for a period of more than one year. The applicant does not dispute these facts on appeal.

On December 22, 2003, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on July 28, 2004. The applicant subsequently filed an Application for Immigrant Visa and Alien Registration (Form DS-230) in 2005 with the U.S. Consulate in Ciudad Juarez, Mexico. The applicant's immigrant visa interview at the U.S. Consulate in Ciudad Juarez was on November 9, 2005. At the time of the applicant's immigrant visa interview, he was seeking admission to the United States within ten years of his April 11, 1998 departure from the United States. He was, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

However, as of the date of the decision on this appeal, more than ten years have passed since the applicant's departure from the United States. A clear reading of the statute reveals that the applicant is no longer inadmissible based on his prior unlawful presence, as the ten-year period for which he was barred from admission has passed. Therefore, based on the current facts, the applicant does not require a waiver of inadmissibility, and the appeal will be dismissed as the waiver application is moot.

**ORDER:** The decision of the District Director is withdrawn and the appeal is dismissed as the waiver application is moot. The matter is returned to the district director for further processing of the applicant's immigrant visa application as the applicant is no longer inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.