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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



H₂

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

NOV 04 2009

IN RE:

Applicant:



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:



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 Officer in Charge (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot as the applicant is no longer inadmissible.

The record reflects that 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 1 year and seeking readmission within 3 years of her last departure from the United States. The record indicates that the applicant is the stepdaughter of a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with her stepfather and siblings.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's stepfather and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated November 14, 2006.

In the present application, the record indicates that the applicant entered the United States in 1988 without inspection. On September 12, 2003, the applicant's naturalized United States citizen stepfather filed a Form I-130 on behalf of the applicant. On October 18, 2004, the applicant's Form I-130 was approved. On December 30, 2004, the applicant turned eighteen (18) years old. In November 2005, the applicant departed the United States. On November 9, 2005, the applicant filed a Form I-601. On November 14, 2006, the OIC denied the applicant's Form I-601, finding the applicant accrued more than 180 days of unlawful presence and she failed to demonstrate extreme hardship to her qualifying relative.

The AAO notes that the applicant accrued unlawful presence from December 30, 2004, the date the applicant turned 18 years old, until November 2005, the date the applicant departed the United States. 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. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of her departure.

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 (whether or not pursuant to section 244(e)) 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, or

(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.

A review of the record reflects that the applicant is no longer inadmissible under 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I). The applicant's departure from the United States occurred in November 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. Accordingly, the AAO finds that the applicant is not inadmissible. As such, the waiver application is moot and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(a)(9)(B)(v) of the Act is moot and need not be addressed.

ORDER: The decision of the Officer in Charge is withdrawn as it has not been established that the applicant is inadmissible, the waiver application declared moot, and the appeal is dismissed. The matter is returned to the Officer in Charge for continued processing.