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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TEXAS

Date:

NOV 06 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.

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, [REDACTED] is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(II), as an alien previously removed from the United States; section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B) as an alien who was removed after accruing more than one year of unlawful presence; and section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), as an alien who reentered the United States without being admitted after having been removed.

The applicant is the spouse of [REDACTED] a citizen of the United States. She sought a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act so as to immigrate to the United States. The district director concluded that the applicant had failed to establish that refusal of her admission into the United States would result in extreme hardship to her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, dated January 30, 2006.* The applicant submitted a timely appeal.

The AAO finds that the Form I-601 and Form I-212, Application for Permission to Reapply for Admission (Form I-212), were improperly filed with the Harlingen office. An alien who is applying for an immigrant visa and is not physically present in the United States and who requires both a Form I-212 and a Form I-601 must file both forms simultaneously with the American consul having jurisdiction over the alien's place of residence. *See* 8 C.F.R. § 212.2(d).

As the record reflects that the applicant is currently residing in Mexico and must apply for a visa to enter the United States. The Harlingen office had no jurisdiction over the applications and should not have rendered a decision. As such, the decision is withdrawn.¹

As the I-601 was improperly filed and the director did not have jurisdiction over the application, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes, however, that the director was correct in finding the applicant inadmissible under section 212(a)(9)(C) of the Act as an alien who was ordered removed and then reentered the United States without being admitted. An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).