



U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 764 443

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.

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 The District Director's decision will be withdrawn, the waiver application will be declared moot, and the appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico. She 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 her 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 her U.S. citizen spouse and children.

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

On appeal, the applicant's spouse asserts that his older son resides part of the week with him in Brawley, California and the remainder of the week with the applicant in Mexico. He states that his younger son resides with his parents in Highland, California. He contends that is extremely difficult for his family members to live apart. He states that the applicant needs to live in the United States to fulfill her responsibilities as a wife and mother to their family. He states that his wife's immigration situation constitutes extreme mental cruelty for him, his wife and children.

In support of the application, the record contains, but is not limited to, a letter from the applicant's spouse, a copy of the applicant's spouse's naturalization certificate, and copies of the biographical pages of the applicant's children's passports. 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 July 1998. The applicant remained in the United States until departing in August 1999. The director found that the applicant accrued unlawful presence from July 1998 until August 1999. The applicant confirms these facts on appeal. Therefore, the applicant accrued unlawful presence in the United States for a period of more than one year.

On August 9, 2004, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on August 23, 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 December 8, 2005. At the time of the applicant's immigrant visa interview, she was seeking admission to the United States within ten years of her August 1999 departure from the United States. She 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 her prior unlawful presence, as the ten-year period for which she 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 District Director's decision is withdrawn, and the waiver application is declared moot because the ten-year period for which the bar to admission was in effect against this applicant has passed. The district director should notify the U.S. Consulate with jurisdiction over the applicant's immigrant visa application that the applicant is no longer inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.