

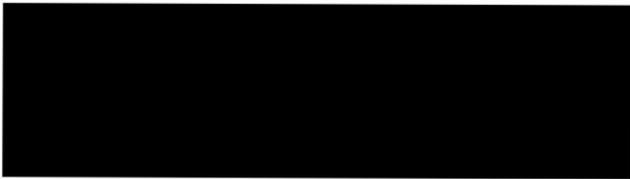
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U.S. Citizenship  
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FILE:



Office: CUIDAD JUAREZ

Date:

**NOV 17 2009**

IN RE:



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:

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 Officer-in-Charge, Ciudad Juarez, 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)(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 one year, and seeking readmission within three years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The officer-in-charge 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 Officer-in-Charge*, dated November 14, 2006.

On appeal, the applicant's wife explains that she will experience extreme hardship if the applicant is not permitted to reside in the United States. *Statement from the Applicant's Wife*, submitted December 11, 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-

(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 . . . 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, . . . is inadmissible.

....

(v) Waiver. - The Attorney General [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 July 2004 and he remained until March 2005. Thus, he accrued approximately eight months of unlawful presence in the United States. He now seeks reentry pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. Accordingly, he was found inadmissible under section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for more than 180 days, but less than one year, and seeking readmission within three years of his last departure.

Upon review, pursuant to section 212(a)(9)(B)(i)(I) of the Act the applicant was barred from seeking admission to the United States within three years of the date of his last departure. As he last departed in March 2005, he was barred from seeking admission until March 2008. As March 2008 has passed, and the record does not show that the applicant has been in the United States since March 2005, he is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. The record does not show that the applicant is inadmissible based on other grounds. Accordingly, he 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 his behalf.

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