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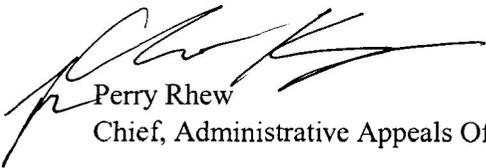
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 District Director, Mexico City, 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)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her permanent resident husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 8, 2007.

On appeal, the applicant's husband asserts that the applicant was not in the United States for more than six consecutive months, thus she is not inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present. *Statement from the Applicant's Husband on Form I-290B*, received April 2, 2007.

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-

....

(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 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 applicant applied for an immigrant visa pursuant to an approved Form I-130, Petition for Alien Relative, filed by her husband on her behalf. A consular officer found that she resided in the United States illegally from March 1994 to May 1998, resulting in over one year of unlawful presence. Accordingly, she was found inadmissible under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure.

Upon review, the applicant's husband asserts that the applicant did not accrue sufficient unlawful presence to render her inadmissible under section 212(a)(9)(B)(i) of the Act. The applicant has not provided sufficient evidence to clearly show whether she was inadmissible under section 212(a)(9)(B)(i) of the Act. However, if the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act, she was barred from seeking admission to the United States within ten years of the date of her last departure. As she last departed in May 1998, she was barred from seeking admission until May 2008. As May 2008 has passed, and the record does not show that the applicant has been in the United States since May 1998, she is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record does not show that the applicant is inadmissible based on other grounds. Accordingly, she 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 her behalf.

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