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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

(CDJ 2004 773 546)

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:



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, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver 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, departing the United States and seeking admission within three years of his departure. The applicant is the son of a U.S. citizen and he seeks a waiver of inadmissibility under 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.

The officer-in-charge found that the applicant had failed to establish extreme hardship to his U.S. citizen father and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 4, dated August 24, 2006.

On appeal, counsel details the hardship that the applicant's father is experiencing. *Brief in Support of Appeal*, at 1-2, dated September 14, 2006. The entire record was reviewed and considered in rendering a decision.

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 . . . 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.

In the present application, the record indicates that the applicant entered the United States without inspection on April 3, 2003, he turned 18 years old on October 4, 2003, and he departed the United States on April 4, 2004.

The applicant accrued unlawful presence from October 4, 2003, the day he turned 18 years old until April 4, 2004, the date he departed the United States. As such, the applicant was barred from seeking admission to the United States under section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for three years from the date of his April 4, 2004 departure.

The applicant's last departure from the United States occurred on April 4, 2004. Therefore, it has been more than three years since the departure that raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible based on his prior unlawful presence as he is not seeking admission within three years of his departure. Based on the current facts, he does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is moot.

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