

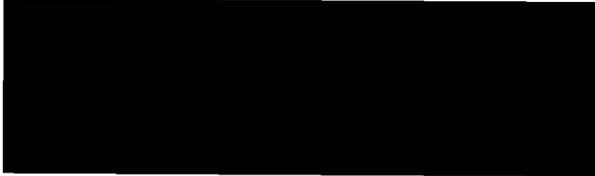
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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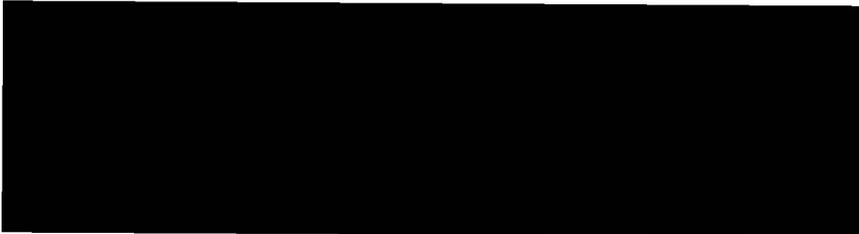
FEB 25 2010

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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 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 as a lawful permanent resident pursuant to an approved Form I-130 relative petition filed by her husband on her behalf.

The district director 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 District Director*, dated May 21, 2007.

On appeal, the applicant's husband states that he will experience extreme hardship if the present waiver application is denied. *Statement from the Applicant's Husband Submitted on 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, or

(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 [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 district director stated that the applicant entered the United States without inspection in February 2002 and remained until she voluntarily departed in February 2003. Thus, the district director indicated that the applicant accrued over one year of unlawful presence. She now seeks readmission as a lawful permanent resident. Based on the foregoing, the district director determined that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure.

Upon review, the record does not support that the applicant accrued over one continuous year of unlawful presence in the United States, such that she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record contains numerous visa applications submitted by the applicant for herself and her son in which she indicated that she and her son were in the United States continuously from May 2002 until February 2003, for a nine month period. *Form OF-221, Two-Way Visa Action Request and Response*, dated January 17, 2006; *Form DS-156, Nonimmigrant Visa Application*, dated February 8, 2009; *Form DS-156, Nonimmigrant Visa Application*, dated August 27, 2008. The applicant has not stated that she was in the United States continuously from February 2002 to February 2003.

The record contains references to the applicant's entry in February 2002 using her lawfully issued Border Crossing Card. *Memorandum of American Consulate General*, dated December 2, 2005. Yet, the applicant testified that she departed the United States approximately four months later. Specifically, upon her attempted entry on February 19, 2003,¹ the applicant provided a sworn statement to an immigration officer in which she discussed her entries to and exits from the United States. She indicated that she entered in February 2002, and she was issued a Form I-94 authorizing her to stay for six months. *Applicant's Sworn Statement*, at 2-3, dated February 19, 2003. She explained that she stayed approximately four months, and that she subsequently returned to Mexico for approximately one week. *Id.* at 3. She testified that she then reentered the United States, but she did not receive a new Form I-94, Departure Record, as her prior Form I-94 remained valid until approximately August or September 2002. *Id.*

The applicant's representation that she departed and reentered the United States approximately four months after entering in February 2002 is reasonably congruent with her repeated representations that she was in the United States from May 2002 until February 2003. The applicant's credibility regarding her entries to and exits from the United States has not been challenged in prior

¹ The applicant attempted to enter the United States at the Atlanta, Georgia point of entry on February 19, 2003, yet she was permitted to withdraw her application for admission. *Form I-213*, dated February 19, 2003.

proceedings, and the AAO finds no inconsistency or other cause to question the veracity of her claims.

A Form I-275, Withdrawal of Application for Admission/Consular Notification, was executed based on the sworn statement provide by the applicant on February 19, 2003. The record shows that a consular officer relied on the Form I-275 to make the finding that the applicant accrued unlawful presence in the United States from January 2001 to February 2003, yet the consular officer noted that the applicant claimed that she left the United States during the stated period. *Form OF-194*, at 2, dated December 1, 2005.

In executing the Form I-275, the immigration officer noted that the applicant was “present in the United States from January 2001 to February 2003,” but that she “last entered the United States in February 2002, departed the United States for 1 week via the land border, returned [using the same Form I-94], and departed February 7, 2003”² *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated February 19, 2003. Accordingly, the document that served as the basis of the consular officer’s finding of over one year of unlawful presence does not support such conclusion.

Based on the foregoing, the AAO finds that, at most, the record establishes that the applicant was continuously present in the United States without a legal immigration status from May 2002 until February 2003, totaling approximately nine months.

Accordingly, she was 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 her last departure. However, as she last departed in February 2003, she was barred from seeking admission until February 2006. As February 2006 has passed, and the record does not show that the applicant has been in the United States since February 2003, she 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, she does not require a waiver of inadmissibility and the present application for a waiver will be declared moot.

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

² It is noted that the applicant was issued a B1/B2 Visa/Border Crossing Card on January 3, 2002, which supports that she was not continuously present from January 2001 to February 2003.