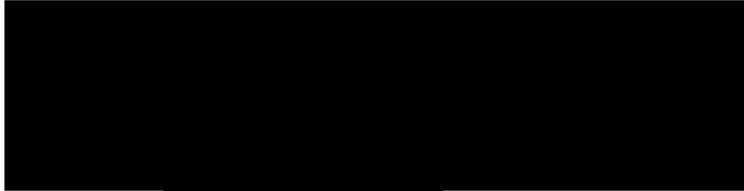




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FILE:

(CDJ 2004 751 947)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

JAN 07 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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 appeal will be dismissed as the underlying waiver application is moot.

The applicant 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure. She is married to a lawful permanent resident (LPR). She 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).

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her lawful permanent resident spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 11, 2007.

On appeal, the applicant states that she realizes she made a mistake, and asks that her application for waiver be approved.

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 indicates that the applicant entered the United States in June 1997, without inspection, and resided in the United States until sometime in 1999, when she voluntarily departed to Mexico. Therefore, the applicant was unlawfully present in the United States for over a year, from June 1997 until at least January 1999. As the applicant was unlawfully present in the United States for more than one year, she was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of ten years from the date of her 1999 departure.

The applicant's departure from the United States occurred in 1999. Therefore, it has been more than ten years since her departure raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible based on her prior unlawful presence as more than ten years time have passed since her departure. Based on the current facts, she 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 underlying waiver application is moot. The case is returned to the District Director so that he may notify the U.S. Consulate of the AAO decision in the matter.