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

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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 08 2010

(CDJ 2004 715 199 relates)

IN RE:



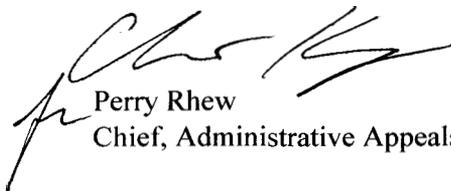
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 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 his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States as a permanent resident pursuant to an approved Form I-130 relative petition filed by his daughter on his 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 January 29, 2007.

On appeal, the applicant explains that his wife and daughter will experience hardship if he is not permitted to reside in the United States. *Statement from the Applicant*, undated. The applicant further asserts that he was convicted of driving under the influence of alcohol in 1970, but that there is no record of the conviction. *Id.* at 1. The entire record was reviewed and considered in rendering a decision on the appeal.

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-

(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 record indicates that the applicant entered the United States without inspection in November 1997 and he remained until June 1999. Thus, he accrued over one year 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)(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 his last departure.

Upon review, pursuant to section 212(a)(9)(B)(i)(II) of the Act the applicant was barred from seeking admission to the United States within ten years of the date of his last departure. As he last departed in June 1999, he was barred from seeking readmission until June 2009. As June 2009 has passed, and the record does not show that the applicant has been in the United States since June 1999, he is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The record reflects that on January 7, 1979 the applicant was arrested for driving under the influence of alcohol in Mountain View, California. He was charged under prior California Vehicle Code § 23102(a).<sup>1</sup> However, the applicant provided a name check report from the Superior Court of California for the county of Santa Clara, where Mountain View is located, that reflects that there are no criminal records from 1974 to February 21, 2007 wherein the applicant was mentioned as a defendant. *Name Search from Superior Court of California, County of Santa Clara*, dated February 21, 2007. Thus, the record supports that the applicant was not convicted of a crime following his arrest on January 7, 1979.

The applicant stated that “there is no record of [his] Drunk Driving conviction of 1970.” *Statement from the Applicant* at 1. However, he previously indicated that he was in the United States from January 1974 to January 1986, and from November 1997 to June 1999. *Id.* The record suggests that the applicant did not intend to represent that he was charged or convicted of driving under the influence of alcohol in 1970, and that he was referencing his arrest in 1979. This finding is supported by the fact that the name check report submitted by the applicant from the Superior Court of California for the county of Santa Clara begins in 1974. *Name Search from Superior Court of California, County of Santa Clara* at 1. It is noted that the applicant further provided documentation from the Superior Court of California, County of San Mateo that reflects that there are no court records relating to the applicant, noting that misdemeanor records are purged and destroyed after 10 years. *Letter from Superior Court of California, County of San Mateo*, dated February 21, 2007.

Based on the foregoing, the record shows by a preponderance of the evidence that the applicant has not been convicted of a crime that may serve as a basis for inadmissibility.

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<sup>1</sup> Prior California Vehicle Code § 23102(a) has been superceded by California Vehicle Code § 23152(a). *See* California Vehicle Code § 23216(b).

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.