

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: MEXICO CITY (CIUDAD JUAREZ) [consolidated therein]

Date:

JAN 12 2010

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, Mexico, denied the application for waiver of excludability (Form I-601), which is now before the Administrative Appeals Office (AAO) on appeal. Following the denial of the Form I-601, the applicant entered the United States pursuant to humanitarian parole and the Field Office Director, El Paso, Texas, subsequently approved an Application to Register Permanent Residence or Adjust Status (Form I-485) under a different alien number. Because there is no evidence in the record showing that a waiver application was approved, the matter will be remanded to the Field Office Director, El Paso, Texas, in order for the Field Office Director to address the applicant's inadmissibility and give an opportunity to the applicant to apply for a waiver by filing Form I-601.

The record reflects that the applicant is a native and citizen of Mexico who initially entered the United States in 1997 without inspection. In February 2004, the applicant departed the United States. On July 4, 2004, the applicant's United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 24, 2004, the applicant's Form I-130 was approved. On September 7, 2004, the applicant's wife filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. In April 2005, the applicant's Form I-129F was approved. On November 4, 2005, the applicant filed a Form I-601 under alien number [REDACTED]. On October 6, 2006, the District Director denied the applicant's Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his qualifying relative. On April 12, 2007, the applicant was paroled into the United States. On November 1, 2007, the applicant filed a Form I-485 [REDACTED]. On July 28, 2008, the Field Office Director, El Paso, Texas, approved the applicant's Form I-485, and granted him status as a lawful permanent resident of the United States.

The AAO notes that the District Director determined that the applicant is inadmissible to the United States, and the applicant filed a Form I-601 that was denied by the District Director. However, when the applicant later filed his adjustment application with the El Paso Field Office, the Field Office Director apparently failed to address the applicant's ground of inadmissibility and approved the applicant's adjustment application. The AAO notes that in order for the applicant to be eligible to adjust to permanent resident status, a Form I-601 must be filed and a waiver of inadmissibility granted. The record does not show that the applicant's inadmissibility was ever addressed by the Field Office Director prior to approving the application for adjustment of status. The approval of the Form I-485 appears to have been erroneous.

Therefore, the matter must be remanded to the Field Office Director, El Paso, Texas, in order for the Field Office Director to address the applicant's inadmissibility and give the applicant the opportunity to apply for a waiver by filing Form I-601, and to initiate proceedings to rescind permanent resident status if the applicant does not qualify for a waiver of inadmissibility.

ORDER: The matter is remanded to the Field Office Director, El Paso, Texas, in order for the Field Office Director to address the applicant's inadmissibility and give the applicant an opportunity to apply for a waiver of inadmissibility (Form I-601). If such an application is filed, the Field Office Director shall issue a decision addressing the merits of the application. If that decision is adverse to

the applicant, it shall be certified for review to the AAO. If no waiver application is filed, the Field Office Director shall initiate proceedings to rescind the applicant's permanent resident status.