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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



Hr

FILE: [REDACTED] Office: CIUDAD JUAREZ Date:
(CDJ 2004 695 009)

JAN 12 2010

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 Officer in Charge, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Mexico who last entered the United States in December 2004 without inspection and remained until November 2005, when she returned to Mexico. She had previously entered the United States without inspection in April 2002 and remained until July 2002. She 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 in the United States for more than one year. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to return to the United States and reside with her husband.

The officer in charge found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge* dated August 24, 2006.

On appeal, the applicant's husband asserts that he is experiencing emotional and financial hardship due to separation from the applicant and his stepdaughter and requests that the waiver be granted for humanitarian reasons. In support of the appeal he submitted documentation on conditions in Mexico. The entire record was reviewed and considered in arriving at 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-

(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.

(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.

In the present case, the record indicates that the applicant entered the United States without inspection in December 2004 and remained until November 2005, when she returned to Mexico. She had previously entered without inspection in April 2002 and remained until July 2002. The officer in charge found her to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act and indicated in the decision that she had been unlawfully present from April 2002 to November 2005. The record indicates, however, that the applicant testified to a consular officer that she departed the United States in July 2002 and returned again in December 2004. She accrued unlawful presence in the United States from April 2002 until July 2002 a period of approximately 120 days, and again from December 29, 2004 until her departure in November 7, 2005, a period of 313 days. The AAO notes that periods of unlawful presence are considered separately, not cumulatively, therefore, as her unlawful presence in 2002 was less than 180 days it does not render her inadmissible, and her 313 days of unlawful presence in 2005 render her inadmissible under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I) of the Act, the applicant was barred from again seeking admission within three years of the date of her departure in November 2005. It has now been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn, and the application for a waiver of inadmissibility is declared moot.