



U.S. Citizenship
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FILE:

Office: LOS ANGELES, CA

Date: SEP 23 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who was determined 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 lawful permanent resident of the United States. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and 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), in order to reside in the United States with her spouse and children.

The district director concluded 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 16, 2004.

On appeal, the applicant contends that she has provided “massive” amounts of evidence that her spouse and children would suffer a “massive amount of hardship” if she is removed from the United States. *Form I-290B*, dated June 26, 2004.

In support of these assertions, the applicant submits a brief; a copy of an application for travel document; a declaration of the applicant’s spouse; copies of the permanent resident cards of the applicant’s spouse and daughter and a copy of the United States birth certificate of the applicant’s son. The entire record was reviewed and considered in rendering a decision.

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 applicant emphasizes that she did not engage in any fraudulent conduct in departing from and returning to the United States. *Brief in Support of Form I-290 Appeal*, undated. *See also Declaration of Eduardo Medina*, dated May 10, 2004. The applicant states that she applied for a travel document in order to travel to Mexico to visit her parents. *Id.* The applicant indicates that immigration officials told her that, as the holder of a V visa, she did not require a travel document in order to depart from and return to the United States. *Id.*

The AAO notes that an applicant who has been unlawfully present in the United States for more than 180 days and departs triggers section 212(a)(9)(B) of the Act, the ground of inadmissibility relating to unlawful presence. Although this section will bar an applicant applying for admission to the United States as an immigrant for three to 10 years, section 214(q)(2) of the Act exempts an applicant applying for admission as a V-1 nonimmigrant from this ground of inadmissibility. The applicant is the holder of a V-1 nonimmigrant visa. Therefore, the applicant does not require a waiver of inadmissibility, the appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the decision of the district director is withdrawn and the application is declared moot.