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U.S. Citizenship
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[REDACTED]

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FILE:

Office: FRANKFURT, GERMANY Date: **DEC 15 2006**

IN RE:

[REDACTED]

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. § 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Frankfurt, Germany, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the decision of the OIC will be withdrawn, and the waiver application will be declared moot.

The applicant, [REDACTED] is a native and citizen of Germany who last entered the United States on March 27, 2003. On April 20, 2004, she filed a Form I-129F Petition for Alien Fiance through her United States citizen (USC) husband [REDACTED] at the U.S. Embassy in Germany. The Form I-129F was filed in conjunction with an I-130 Petition for Alien Relative, so that [REDACTED] could be admitted to the United States on a K-3 visa. [REDACTED] was found to be inadmissible under section 212(a)(9)(B)(i), 8 U.S.C. § 1182(a)(9)(B)(i), for having accrued more than 180 days of unlawful presence in the United States, departing, and seeking readmission within 3 years of such departure. In order to rejoin her husband in the United States she seeks a waiver of inadmissibility under section 212(a)(9)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The record reflects that [REDACTED] first entered the United States as a nonimmigrant visitor for pleasure under the Visa Waiver program on January 5, 2002, and was authorized to stay until April 14, 2002. She remained in the United States until March 13, 2003. This resulted in an 11-month period of unlawful presence. Despite the fact that she was inadmissible as a result of her prior overstay, [REDACTED] reentered the United States under the Visa Waiver program on March 27, 2003. She remained until December 12, 2003. As she was inadmissible and did not make a lawful entry, she began accruing unlawful presence the day she arrived in the United States until the day she departed, resulting in 260 days of unlawful presence. In 2005, she applied for an immigrant visa at the U.S. Embassy in Frankfurt. As a result of this unlawful presence, departure, and seeking admission again within 3 years of her departure, the OIC found her to be inadmissible to the United States. *OIC's decision, dated April 19, 2005.* The OIC also found that the applicant 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). *Id.*

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.

An application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). There has been no final decision made on [REDACTED] visa application, so the applicant, as of today, is still seeking admission. The applicant's departure occurred in December 12, 2003. It has now been more than three years since the departure that made the inadmissibility issue arise in her application. A clear reading of the law reveals that the applicant is no longer inadmissible. She, therefore, does not require a waiver of inadmissibility, so the appeal will be dismissed, the decision of the OIC will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, as the underlying application is moot.