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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CLEVELAND, OH

Date: **MAY 14 2008**

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:



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 waiver application was denied by the District Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under 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), thus the relevant waiver 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 in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is the son of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his mother.

The District Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen mother. The application was denied accordingly. *Decision of the District Director*, dated December 1, 2006.

On appeal, counsel asserts that the applicant has demonstrated that his mother would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B; Attorney's Brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant; statements from the applicant's mother; a psychological evaluation; medical letters, records, and prescriptions for the applicant's mother; earnings statements and W-2 forms for the applicant's parents; a letter from a friend of the applicant; an American Foreign Service identity card for the applicant's mother; copies of United States passports for the applicant's mother; tax statements for the applicant's parents; an employment letter for the applicant; and a report of birth abroad for the applicant's mother. 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.

In the present application, the record indicates that the applicant was admitted to the United States on October 10, 1994 with a Form I-586 border crossing card. *Border Crossing Card; Form I-485, Application to Register Permanent Residence or Adjust Status*. The applicant filed his Form I-485 on June 28, 1999. *Id.* The applicant remained in the United States until April or May 2004. *Form I-512, Authorization of Parole of an Alien into the United States; Form I-94*. The applicant returned to the United States on May 3, 2004 under an authorization of advance parole. *Form I-94*.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issues of inadmissibility.

Section 222(g) of the Act states in pertinent part:

(g) Nonimmigrant visa void at conclusion of authorized period of stay.—

- (1) In the case of an alien who has been admitted on the basis of a nonimmigrant visa and remained in the United States beyond the period of stay authorized by the Attorney General, such visa shall be void beginning after the conclusion of such period of stay.

Section 222(g) does not apply to aliens who were admitted with a Form I-586 Mexican Border Crossing Card. *Memorandum, Michael A. Pearson, Executive Associate Commissioner for Field Operations*, dated January 14, 1999. As a matter of practicality, those subjects admitted on the basis of a nonimmigrant visa who have not been issued Form I-94, such as those entering for less than 72 hours and remaining within 25 miles of the border, are, in general, not subject to Section 222(g) unless a formal finding of a status violation has been made by the Immigration and Naturalization Service (currently Citizenship and Immigration Services (CIS)) or an immigration judge, that resulted in the termination of the authorized period of stay. *Id.* As the applicant was admitted with a Form I-586 Border Crossing Card and there has been no formal finding of a status violation, he is not subject to Section 222(g). As such, the applicant has not accrued unlawful presence and he is therefore not inadmissible under Section 212(a)(9)(B) of the Act. The waiver filed pursuant to sections 212(a)(9)(B)(v) of the Act will therefore be dismissed as the underlying waiver application is moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed as moot.

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