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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
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FILE: [REDACTED] Office: LOS ANGELES (SANTA ANA)

DATE: APR 08 2009

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:

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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States in June 1999 without inspection and never departed. Noting his entry without inspection as the ground of inadmissibility, the applicant submitted a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) in October 2006.

The district director determined that the applicant had been accruing unlawful presence since his entry in 1999. The district director examined the applicant's eligibility for a waiver under section 212(a)(9)(B)(v) of the act, 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 District Director*, dated February 12, 2007.

On March 6, 2007, the applicant appealed the decision, by submitting the Form I-290B, Notice of Appeal (Form I-290B) and documentation relating to the applicant's and his family's financial situation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

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 AAO finds that the district director erred in adjudicating the applicant's Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. There is no evidence in the record that the applicant has left the United States since his arrival in 1999. Section 212(a)(9)(B) of the Act requires that the applicant leave the United States before he is found to be inadmissible for unlawful presence. The applicant is not inadmissible for unlawful presence since he has not left the country. In addition, there is no waiver for his illegal entry and he is not eligible for the exception found in section 245(i) of the Act. A Form I-601 cannot overcome his inadmissibility for illegal entry. For the above reasons, the Form I-601 was improperly filed. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.