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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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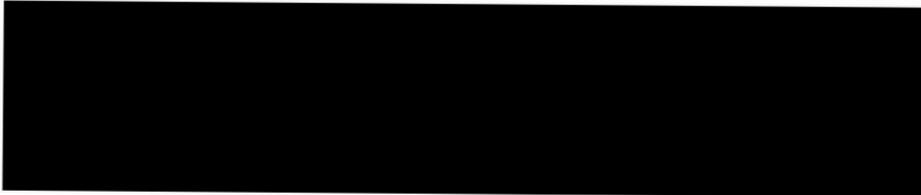
H<sub>3</sub>

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUN 01 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:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.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 matter will be returned to the district director for continued processing.

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. The applicant 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 be able to reside in the United States with her lawful permanent resident spouse.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 29, 2006.

On appeal, counsel asserts that the applicant did not accrue unlawful presence as alleged by the U.S. Citizenship and Immigration Services (USCIS). In support of this contention, counsel submits a memorandum, dated February 21, 2007 and referenced exhibits. 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 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 record indicates that the applicant entered the United States without inspection in May 1990. According to the decision of the district director, the applicant remained in the United States until November 1999. The district director found that the applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in November 1999. The district director thus concluded that the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

On appeal, counsel has provided extensive documentation to establish that the applicant was unlawfully in the United States from May 1990 until her departure in November 1990, not in November 1999 as concluded by the district director. Such evidence includes school records for the applicant's children, born in Mexico in 1997 and 2000, medical records, and other documentation, including affidavits from community members, to establish that the applicant departed the United States in November 1990 and has not returned since. As counsel asserts and documents,

[the applicant] has lived in Mexico since her (sic) left the United States in November, 1990. She has not returned. She has filed taxes, attended monthly school meetings for her children and with her husband bought a house and bore two more children. Her husband during these years split his time between his home and job in the US and his family in Mexico. When in the US he regularly sent money back to his wife and family in Mexico. Proof of all the above is attached hereto proving her residency in Mexico.... There is at least one item from each year between 1991-1999. Several of the items are school records of the children showing [redacted] [the applicant's] signature five times during the year. Also attached with translation are three (3) Affidavits which attest to her continued residence in Mexico from 1990 to the present. The Affidavits are from her doctor, [redacted] Who is also her neighbor, School Principal, [redacted] and an Affidavit of 'Domicile and Origin' from her town [redacted]. We state without reservation from the evidence presented that [redacted] [redacted] was NOT in the United States after April 1, 1997 and therefore did not accrue any unlawful presence. Accordingly she needs no waiver....

*Memorandum in Support of Appeal, dated February 21, 2007.*

Based on a thorough review of the record, the AAO concurs with counsel that as the unlawful presence provisions of section 212(a)(9)(B)(i)(II) of the Act did not become effective until April 1, 1997, any unauthorized presence by the applicant in the United States prior to April 1, 1997 is irrelevant to the AAO's analysis of this inadmissibility ground. There is sufficient documentation in the record to confirm the applicant's presence in Mexico from 1990 to the present. As such, because the ground of inadmissibility set forth in the district director's decision is determined to be in error,

the AAO concludes that the applicant is not inadmissible under the Act. The applicant's appeal will be dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility will be declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared moot. The district director shall continue to process the immigrant visa application accordingly.