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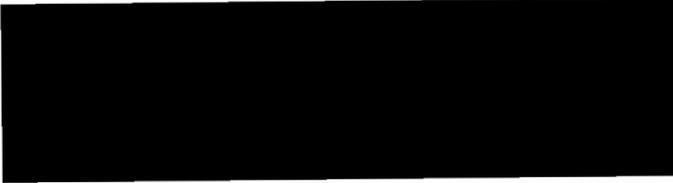
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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JUN 11 2009

FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date:
(CDJ 2004 719 482) (CIUDAD JUAREZ)

IN RE: [REDACTED]

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the 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 has a U.S. citizen spouse and seeks a waiver of inadmissibility in order to reside in the United States.

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 spouse and the application was denied accordingly. *Decision of the District Director*, at 4 dated April 28, 2006.

On appeal, the applicant's spouse details the hardship that she has encountered in Mexico. *Form I-290B*, dated May 3, 2006.

The record includes, but is not limited to, the applicant's Form I-290B. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in September 1996 and voluntarily departed the United States in March 1999. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until March 1999, when he departed the United States. The applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his March 1999 departure.

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's last departure from the United States occurred on March 1999. Therefore, it has been more than ten years since the departure that raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible based on his prior unlawful presence as he is not seeking admission within ten years of his last departure from the United States. As such, he does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is no longer required.

ORDER: The appeal is dismissed as the waiver application is moot.