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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: CALIFORNIA SERVICE CENTER DATE: **JUL 20 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a combined motion to reopen and reconsider. The motion will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States in 1999 without authorization. Noting her entry without authorization, the applicant requested a pardon by submitting the Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612) in July 2009.

The director noted that the applicant had not presented any documentation to establish that she had been inspected and admitted to the United States as a J-1 exchange visitor, and by extension, that she was subject to section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The Form I-612 was denied accordingly. *Decision of the Director*, dated October 16, 2009.

The applicant appealed the decision by submitting the Form I-290B, Notice of Appeal (Form I-290B) and documentation relating to the hardships her U.S. citizen spouse and children would encounter were the applicant unable to reside in the United States. On appeal, the AAO found that the director properly denied the Form I-612, as there was no evidence in the record to establish that the applicant obtained J-1 exchange visitor status and was subject to section 212(e) of the Act. The AAO further noted as follows:

[T]he record contains a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), signed by the applicant in September 2009, that appears to remain adjudicated. On the Form I-601 and in supporting documentation, the applicant references her illegal presence in the United States and addresses the hardships her family would face were she to return to Mexico. As the Form I-601 has not been denied and subsequently appealed, the AAO is not able to address the issues raised in said form and/or in the supporting documentation.

Decision of the AAO, dated February 18, 2010. The appeal was dismissed.

On motion, the applicant submits the Form I-290B, a letter from the applicant's spouse, and an attachment with respect to hardship to the applicant's family. As previously noted, the record does not establish that the applicant obtained J-1 exchange visitor status and is subject to section 212(e) of the Act. As such, the instant motion is dismissed.¹

ORDER: The motion is dismissed.

¹ The AAO notes that the Form I-601 referenced above remains adjudicated at this time. However, there is no evidence in the record that establishes that the applicant's U.S. citizen spouse has filed an I-130, Petition for Alien Relative, on behalf of the applicant, which is the form necessary to begin the immigration process on behalf of a spouse of a U.S. citizen. The viability of the Form I-601 is dependent on an approved Form I-130. In the absence of an underlying approved Form I-130, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot.