



U.S. Citizenship
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FILE: Office: CIUDAD JUAREZ
CDJ2004 787 344 (relates)

Date: APR 06 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 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 Officer in Charge (OIC), Ciudad Juarez, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the Officer in Charge will be withdrawn and the application declared moot.

The record reflects that the applicant is a native and citizen of Mexico, the wife of a U.S. citizen, the mother of a U.S. citizen son, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and son.

The OIC found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and denied the application.

The body of the applicant's Form I-290B appeal states, in its entirety,

Not sure what to send. I was sent a letter saying I had a deportation from U.S. + I have never been deported, please search for any information on my case because I believe there was a mistake. I did entered the U.S. with a permit + stayed after it expired + later my son was born in the U.S., + I had to go back to Mexico to take care of my mother who was sick. I pray that my case will be reconsired + can please have another chance. Thank you.

[Errors in the original.]

The applicant appears to have misapprehended the word "departed" in the decision denying waiver as "deported." Although the applicant's appeal may be read as not having specifically identified any erroneous conclusion of law or statement of fact as required by 8 C.F.R. § 103.3(a)(1)(v), the AAO will exercise its discretion to consider the appeal. Although the applicant did not appear to contest the determination of inadmissibility, the AAO will review that determination.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission

within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

....

(v) Waiver. – The Attorney General [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 shows that the applicant entered the United States without inspection during March of 2003. The applicant's presence in the United States during that period was unlawful. During January of 2004, the applicant departed the United States voluntarily. This ended the applicant's unlawful presence in the United States.

The evidence in the record is sufficient to show that the applicant was illegally present in the United States from March 2003 to January 2004, and that she left the United States during January of 2004, thus triggering a three-year inadmissibility pursuant to section 212(a)(9)(B)(i) of the Act.

An application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992).

The applicant's last departure occurred during January of 2004. More than three years have elapsed since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible.

ORDER: The appeal is dismissed, the prior decision of the OIC is withdrawn and the application for a waiver of inadmissibility is declared moot.