

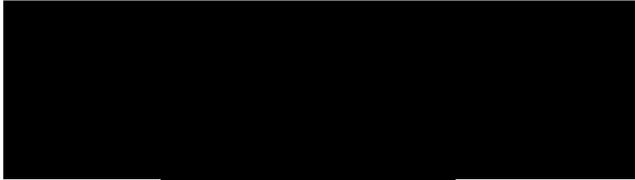
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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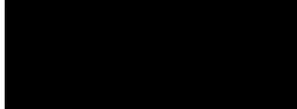
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HB

APR 08 2010

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date:

(CDJ 2001 595 206)

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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.

Perry Rhew
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 The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Mexico who first entered the United States in September 2003 without inspection and remained until June 2004, when she returned to Mexico. She was admitted to the United States on June 22, 2004 with a V-2 visa and has remained in V-2 status until the present time.¹ She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year. The applicant is the daughter of a Lawful Permanent Resident and the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to remain in the United States.

The district director 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 September 14, 2007.

On appeal, counsel asserts that denial of the waiver application would result in extreme hardship to the applicant's father. No further documentation was submitted in support of the waiver application or appeal. The entire record was reviewed and considered in arriving at 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-

(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.

¹ The applicant was again admitted with a V-2 visa on April 22, 2006 and her V-2 status was most recently extended in 2008 until April 21, 2010. The applicant traveled to Mexico on December 8, 2009 and was placed in deferred inspection upon her return on December 22, 2009, but was later determined to be in valid V-2 status and admitted.

(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 [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.

In the present case, the record indicates that the applicant entered the United States in September 2003 without inspection and remained until June 2004. She accrued unlawful presence in the United States from September 2003 until her departure in June 2004. The applicant was admitted to the United States on June 22, 2004 with a V2 visa and has remained in V2 status since that date.

In *Matter of Rodarte-Roman*, the Board of Immigration Appeals (BIA) analyzed congressional intent in the construction of section 212(a)(9) of the Act:

The unifying theme of section 212(a)(9) is that all its subparagraphs seek to compound the adverse consequences of immigration violations by making it more difficult for individuals who have left the United States after committing such violations to be lawfully readmitted thereafter. We deem it evident that Congress made departure (rather than commencement of unlawful presence) the event that triggers inadmissibility or ineligibility for relief, because it is departure which marks the culmination of the alien's prior immigration violation and which makes the alien a potential *recidivist*. It is recidivism, and not mere unlawful presence, that section 212(a)(9) is designed to prevent.

23 I&N Dec. 905, 909 (BIA 2006).

The AAO finds that the terms and intent of section 212(a)(9)(B) of the Act require that an individual be subject to the inadmissibility bar until he or she has remained outside the United States for the required period. Congress enacted section 212(a)(9) of the Act with the purpose of penalizing aliens who have accrued more than 180 days of unlawful presence in the United States and to deter them from subsequent unlawful presence in the United States. The penalty for aliens who accrue unlawful presence and depart is that they must remain outside the United States for a specified period of time before they will be admitted. An alien who reenters the United States before the specified period of time has elapsed without permission to do so seeks to defeat the punitive and preventive intent of the law. Allowing an alien to serve any portion of this period of inadmissibility in the United States

while simultaneously accruing additional unlawful presence would reward recidivism and is contrary to the purpose of the enactment of section 212(a)(9) of the Act.

The AAO has found an exception to the requirement that an alien remain outside the United States for the entire period of inadmissibility if the alien triggers inadmissibility under section 212(a)(9)(B)(i) of the Act by departing the United States and then reenters pursuant to advance parole. Since parole is a lawful entry, an alien paroled into the United States is not considered to be unlawfully present unless the period for which parole was authorized expires or the parole is otherwise terminated. *See* Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii); 8 C.F.R. § 212.5(e). The Act has provided the Attorney General, and now the Secretary of Homeland Security, the discretion to parole otherwise inadmissible aliens into the United States. *See* Section 212(a)(9)(B)(ii) of the Act; 8 C.F.R. § 212.5(a)-(d).

Similarly, V-2 status may be granted regardless of inadmissibility under section 212(a)(9)(B) of the Act, and like an alien who reenters the United States pursuant to advance parole, an individual admitted as a V-2 nonimmigrant has entered legally after inspection, is not inadmissible under section 212(a)(6)(A)(i) of the Act, and does not accrue unlawful presence. An alien triggering inadmissibility under Section 212(a)(9)(B) of the Act by departing from the United States is not relieved of inadmissibility under that section by virtue of a subsequent lawful entry and remains “inadmissible” for a period of either three or ten years after the departure. Nevertheless, it is consistent with the language and purposes of the Act that alien who departs the United States and reenters pursuant to a grant of advance parole or other lawful status not be required to remain outside the United States for this entire period.² Because parole or admission as a V-2 nonimmigrant is a lawful entry, such an alien is not a recidivist by virtue of this entry, and the purposes of the Act are not frustrated by allowing the period of inadmissibility to run while the alien is present in the United States.

In this case, the applicant became subject to the three-year bar by departing the United States in June 2004, and although she did not remain outside the United States for three years before seeking admission, she was permitted to reenter the United States lawfully with a V-2 visa. The exception to the requirement that she remain outside the United States for three years therefore applies. The applicant was inadmissible under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days but less than one year and was barred from again seeking admission within three years of her June 2004 departure. It has now been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act, and she is no longer inadmissible.

² The exception—that the three-year “clock” runs even though an alien subject to section 212(a)(9)(B)(i)(I) of the Act is in the United States—is based on an alien becoming subject to the penalty for his or her unlawful presence by departing and being outside the United States, and then being permitted to reenter. It does not apply to an inadmissible alien who acquires V nonimmigrant status in the United States after reentering without inspection.

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