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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  
and Immigration  
Services**



#6

FILE:



Office: CIUDAD JUAREZ

Date:

(CDJ 2004 727 348)

APR 16 2010

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 PETITIONER:



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 Officer in Charge, Ciudad Juarez, 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 The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn, and the application declared moot.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 resided in the United States from February 1992, when he entered without inspection, to December 18, 1999, when he was removed from the United States. He 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 one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to return to the United States and reside with his wife.

The officer in charge 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 Officer in Charge* dated March 8, 2007.

On appeal, the applicant's representative asserts that the applicant's wife was misled by a notary who helped her prepare the waiver application and was unaware of the type of supporting documents needed. In support of the waiver application, the applicant's representative submitted an affidavit from the applicant's wife, a letter from the applicant's mother-in-law and a letter from her doctor, copies of bills and other financial documents, copies of birth certificates for the applicant's children, and copies of school records for the applicant's wife. 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:

- (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, 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.

In the present case, the record indicates that the applicant entered the United States in February 1992 without inspection and remained until December 18, 1999, when he was deported. He accrued unlawful presence in the United States from April 1, 1997, the date section 212(a)(9)(B) entered into effect, to December 18, 1999. The applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II) of the Act, the applicant was barred from again seeking admission within ten years of the date of his departure in December 1999. It has now been more than ten years 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 director is withdrawn, and the application for a waiver of inadmissibility is declared moot.