

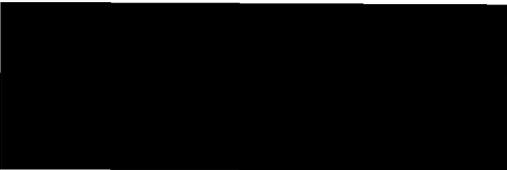
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6



FILE: AAO 08 122 50030 Office: MEXICO CITY (CIUDAD JUAREZ) Date: AUG 02 2010
CDJ 2004 784 715 / [REDACTED] (relates)

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

Thank you,

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 as moot.

The record reflects that 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 10 years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Fiancé (Form I-129F). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen spouse.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 24, 2007.

On appeal, the applicant requests reconsideration and submits a hardship letter from her spouse.

The record consists of a letter from the applicant's spouse detailing the hardship claim. See, *undated letter from [REDACTED]* submitted October 29, 2007. There is no additional evidence of hardship in the record. 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-
 -
 - (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 [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 application, the record indicates that the applicant entered the United States on January 8, 2003, using a border crossing card, and she was admitted as a B-2 nonimmigrant, with authorization to stay until July 7, 2003. On January 15, 2003, the applicant married her U.S. citizen spouse at [REDACTED]. On May 22, 2003, the applicant's husband filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. Simultaneously with the Form I-130, the applicant filed a Form I-485, Application to Adjust Status. On April 8, 2004, the applicant's Form I-485 application was denied. In the denial notice, the director noted that the applicant had failed to appear for scheduled interviews, and denied the application for failure to appear. The applicant departed the United States for Mexico in August 2004. On October 4, 2004, the applicant's husband filed a Petition for Alien Fiancé(e) (Form I-129F), on behalf of the applicant. On February 15, 2006, the applicant filed a Form I-601. On September 24, 2007, the District Director denied the Form I-601, after determining that the applicant had accrued unlawful presence from her entry in January 2003, until her departure in August 2004, which is more than a year of unlawful presence, and she had failed to demonstrate extreme hardship to her United States citizen spouse.

It is noted that the record indicates that on September 6, 2004, the applicant applied for admission into the United States at the Columbus, New Mexico, Port of Entry, and was refused entry for not having a valid entry document and was deemed in violation of Section 212(a)(7)(A)(i)(I) of the Act. The applicant was allowed to withdraw the application for admission and return to Mexico. The record does not reflect any other violation.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. An alien who remains in the United States beyond the authorized period of stay is unlawfully present and becomes subject to the 3- or 10-year bar to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. Under current Service policy, unlawful presence is counted in the following manner for nonimmigrants:

(A) Nonimmigrants Admitted until a Specific Date. Nonimmigrants admitted until a specific date begin accruing unlawful presence on the date the authorized period of admission expires, as noted on Form I-94, Arrival/Departure Card.

See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009.

Upon review, the evidence of record does not show that the applicant has accrued more than a year of unlawful presence in the United States. The record reflects that the applicant was admitted into the United States on January 8, 2003, as a B-2 nonimmigrant, with authorization to stay until July 7, 2003. On May 22, 2003, prior to expiration of her authorized stay, the applicant's husband filed a Form I-130, Petition for Alien Relative, on behalf of the applicant; and, simultaneously with the filing of the Form I-130 Petition, the applicant filed a Form I-485, Application to Adjust Status. The applicant's Form I-485 application was pending until it was denied on April 8, 2004. The applicant accrued unlawful presence,

from April 8, 2004, the date of denial of her Form I-485 application, until August 2004, when she departed the United States, a period of less than 180 days. Therefore, the director's determination that the applicant is 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, is withdrawn.

As discussed above, the evidence does not show that the applicant has accrued unlawful presence in the United States for a period greater than 180 days, but less than one year. As such the applicant is not inadmissible under section 212(a)(9)(B)(i)(I) of the Act. Therefore, the applicant does not require a waiver of inadmissibility.

It is noted that the record indicates that when the applicant attempted to enter the United States without proper documentation her husband apparently made statements pertaining to her status, but there is no indication that the applicant made any misrepresentations.

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