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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**



*HG*

FILE: AAO 08 161 50004 Office: MEXICO CITY (CIUDAD JUAREZ) Date: **AUG 05 2010**  
(CDJ 2005 773 051)

IN RE: [REDACTED]

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:

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

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behaviour of the system  
during the run, to be able to  
see the results of the run

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**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 The appeal will be dismissed, the previous decision of the district director will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Mexico who resided in the United States from August 2002, when he was admitted with a V visa, to April 8, 2007, when he returned to Mexico. He 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 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 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 March 4, 2008.

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.

(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 August 2002 with a V visa and his visa expired on September 12, 2006. He remained in the United States until April 8, 2007, when he returned to Mexico and therefore accrued unlawful presence in the United States from September 13, 2006, the date his visa expired, until his departure in April 2007. 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. Pursuant to section 212(a)(9)(B)(i)(I) of the Act, the applicant was barred from again seeking admission within three years of the date of his departure in April 2007. 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. 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.

