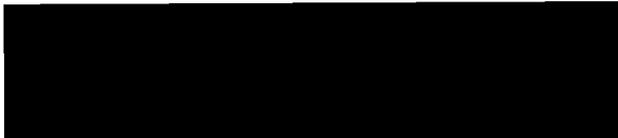


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H2  
H6

FILE: [REDACTED]  
(CDJ 2005 714 804)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

**JAN 07 2010**

IN RE: [REDACTED]

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

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is no longer inadmissible under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B), and the relevant waiver application is thus moot.

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 admission within ten years of his last departure. The applicant is the stepson of a Lawful Permanent Resident (LPR). He seeks a waiver of inadmissibility in order to reside in the United States.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied on December 5, 2006.

On appeal, counsel for the applicant asserts that the District Director incorrectly calculated the applicant's unlawful presence.

The entire record was reviewed and considered in rendering 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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
  - (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 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 matter, the record indicates that the applicant entered the United States without inspection in 2002 and voluntarily departed the United States, returning to Mexico no later than October 25, 2005, the date of his visa interview. Pursuant to section 212(a)(9)(B)(iii)(I) of the Act, unlawful presence does not accrue for aliens who are under 18 years of age. The applicant turned 18 on November 23, 2004. As such, the applicant accrued unlawful presence from November 24, 2004, the day after his 18<sup>th</sup> birthday, until no later than October 25, 2005, a period greater than 180 days but less than one year. As such, the applicant was inadmissible under 212(a)(9)(B)(i)(I) of the Act for a period of three years from the date of his 2005 departure. The applicant's inadmissibility expired in October 2008.

A clear reading of the law reveals that the applicant is no longer inadmissible based on **his** prior unlawful presence as more than three years time passed since his departure. Based on the current facts, he does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is moot.

**ORDER:** The appeal is dismissed as the underlying application is moot. The case is returned to the District Director so that he may notify the U.S. Consulate of the AAO decision in this matter.