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

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H6 H2

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: JAN 21 2010

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:

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 (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot as the applicant is no longer inadmissible.

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)(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 1 year and seeking readmission within 3 years of his last departure from the United States. The record indicates that the applicant is the son of a lawful permanent resident of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 family.

The OIC 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 Officer in Charge*, dated March 30, 2007.

In the present application, the record indicates that the applicant's lawful permanent resident father filed a Form I-130 on behalf of the applicant. On August 8, 2002, the applicant's Form I-130 was approved. In March 2004, the applicant entered the United States without inspection. In December 2004, the applicant voluntarily departed the United States. On November 29, 2005, the applicant filed a Form I-601. On March 30, 2007, the OIC denied the Form I-601, finding the applicant had accrued more than 180 days but less than one year of unlawful presence and had failed to demonstrate extreme hardship to his qualifying relative. The AAO notes that the applicant accrued unlawful presence from the date of his March 2004 entry without inspection until his December 2004 departure.

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 244(e)) 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, 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 [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.

A review of the record reflects that the applicant is no longer inadmissible under 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I). The applicant's departure from the United States occurred in December 2004. 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. Accordingly, the AAO finds that the applicant is not inadmissible. As such, the waiver application is moot and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(a)(9)(B)(v) of the Act need not be addressed.

ORDER: The decision of the Officer in Charge is withdrawn as it has not been established that the applicant is inadmissible, the waiver application is declared moot, and the appeal is dismissed. The matter is returned to the Officer in Charge so that he may notify the U.S. Consulate of the AAO's decision in this matter.