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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

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FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 01 2010
(relates)

IN RE: Applicant: [Redacted]

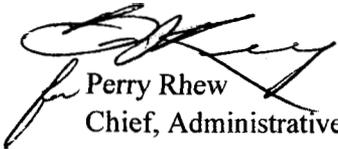
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 ten years of her last departure from the United States. The record reflects that the applicant entered the United States in 1994, and unlawfully resided until May 2000. The record indicates that the applicant is married to a United States lawful permanent resident. She 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 her lawful permanent resident husband.

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 14, 2007.

It is noted that the evidence of record consists of a letter from the applicant's spouse, dated June 27, 2006, stating that if his wife is not admitted to the United States he will not accomplish his dreams of having his children grow up in the United States, and buying a home in the United States. The record does not contain any additional evidence.

On appeal, the applicant does not state a reason for the appeal. Instead, the applicant's husband states that "due to health problems [he] is unable to comply at this time." It is noted that the applicant indicates on the Notice of Appeal to the Administrative Appeals Office (AAO), that a brief and/or additional evidence will be submitted within 30 days. *Form I-290B*, filed October 16, 2007. However, the record does not reflect receipt of a brief or additional evidence. Therefore, the record must be considered complete.

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.

As discussed above, the evidence does show that the applicant has accrued unlawful presence in the United States for a period greater than one year. As such, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Therefore, the applicant requires a waiver of inadmissibility.

In the present case, however, the record indicates that the applicant's last departure occurred in May 2000 when she returned to Mexico. Since it has now been more than ten years since that departure the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. She is now eligible to reapply for an immigrant visa.

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

ORDER: The appeal is dismissed.