

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

H6



FILE:



Office: MEXICO CITY, MEXICO Date:
(CIUDAD JUAREZ)

JUL 19 2010

IN RE:

Applicant:



APPLICATION:

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

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,

*Tang Syed
for*

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 not 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 her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated November 23, 2007.

On appeal, the applicant's spouse states he would experience extreme hardship. *Form I-290B, Notice of Appeal or Motion*.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; medical records for the applicant's child; and publications on health conditions. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record also includes a document in the Spanish language unaccompanied by a certified translation. Accordingly, the AAO will not consider this document. *See* 8 C.F.R. § 103.2(b)(3).

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 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 1996 and voluntarily departed the United States, returning to Mexico in November 1999. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated August 23, 2006. The applicant has not re-entered the United States. *Id.* The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the enactment of unlawful presence provisions under the Act, until she departed the United States in November 1999. Pursuant to section 212(a)(9)(B)(i)(II), in applying for an immigrant visa the applicant was barred from again seeking admission within ten years of the date of her departure, November 1999.

The applicant's departure from the United States occurred in November 1999. Therefore, it has been more than ten years since her departure raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible based on her prior unlawful presence as more than ten years time passed since her departure. Based on the current facts, she 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.