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



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 26 2010

IN RE: Applicant: [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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States as a permanent resident pursuant to an approved Form I-130 relative petition filed on his behalf.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated November 16, 2007.

On appeal, the applicant asserts that he and his parents are enduring emotional hardship due to his absence from the United States. *Statement from the Applicant on Form I-290B*, dated December 5, 2007. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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, 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.

The record indicates that the applicant resided in the United States unlawfully from June 1988 until August 29, 2006. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed on his behalf. The district director stated that the applicant accrued unlawful presence during his entire stay in the United States, from June 1988 until August 29, 2006, totaling over one year. Thus, the district director concluded that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.

Upon review, it is noted that the applicant was born on February 1, 1988. Therefore, he reached 18 years of age on February 1, 2006. No period of time in which an applicant is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States. Section 212(a)(9)(B)(iii)(I) of the Act. Accordingly, the applicant accrued unlawful presence from February 1, 2006 until he departed on August 29, 2006, totaling approximately seven months. Therefore, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act, as he did not accrue more than one year of unlawful presence.

However, as the applicant accrued more than 180 days, but less than one year, of unlawful presence, he was barred from seeking admission within three years of his last departure pursuant to section 212(a)(9)(B)(i)(I) of the Act. As he last departed on August 29, 2006, he was barred from seeking admission until on August 29, 2009. As August 29, 2009 has passed, and the record does not show that the applicant has been in the United States since August 29, 2006, he is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. The record does not show that the applicant is inadmissible based on other grounds. Accordingly, he does not require a waiver of inadmissibility and the present application for a waiver will be declared moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot.