

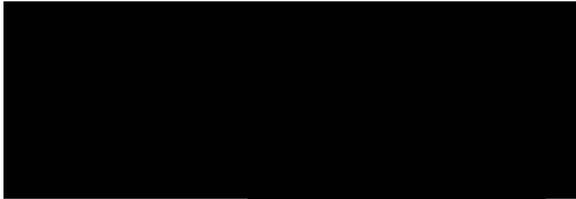
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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MAR 05 2010

FILE: [REDACTED]
(CDJ 2004 751 429)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Chew
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.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 his last departure from the United States. The applicant is the father of a United States citizen.¹ 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 accordingly. *Decision of the District Director*, dated December 12, 2006.

On appeal, the applicant's son notes that the applicant's other child will suffer extreme hardship. *Form I-290B, Notice of Appeal to the Administrative Appeals Office and attached statements*.

In support of these assertions, the record includes a psychological evaluation of one of the applicant's children; a statement from one of the applicant's children; loan statements; and a utility bill. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record includes several documents in the Spanish language unaccompanied by certified translations. As such, the AAO will not review these documents. *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.

....

¹ The AAO notes that the record does not establish that the applicant has any children other than the child who submitted the Form I-130 on his behalf.

(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 case, the record indicates that the applicant entered the United States without inspection in 1986 and voluntarily departed in September 2004, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated January 6, 2006. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in September 2004. In applying for an immigrant visa, the applicant is seeking admission within ten years of his September 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of inadmissibility resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that inadmissibility would impose extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Children are not qualifying relatives in section 212(a)(9)(B)(v) waiver proceedings. In the present case, the record fails to document that the applicant has a U.S. citizen or lawfully permanent resident spouse or parent. Although the applicant submits a copy of the Permanent Resident Card belonging to [REDACTED], the record contains no proof that [REDACTED] is married to the applicant. The AAO thus finds the applicant has no qualifying relative and is not eligible for a Form I-601 waiver.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.