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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: MAR 06 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 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.

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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director will be withdrawn, the application will be declared moot, and the appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The district director found that the applicant accrued unlawful presence in the United States from July 2001 through September 2005. The district director therefore found the applicant 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 longer than one year and seeking admission within ten years of his last departure.

The applicant sought 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 mother and daughter. The district director also concluded that the applicant had failed to establish that the bar to admission would impose extreme hardship on the applicant's spouse and denied the waiver application accordingly. On appeal, the applicant's mother submitted a statement and additional evidence.

The record contains, among other documents, medical and psychological documentation pertinent to the applicant's mother, statements from the applicant's mother, a statement from the father of the applicant's child, a statement from the applicant's siblings, the death certificate of a younger sibling of the applicant, and two letters in Spanish without English translations.

Any document containing foreign language submitted to USCIS must be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). The statements submitted without the required translations will not be considered.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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 of 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.

The record shows that the applicant entered the United States without inspection during July 2001 and remained in the United States until she departed voluntarily on September 12, 2005. The applicant is seeking admission to the United States.

However, section 212(a)(9)(B)(iii)(I) of the Act states,

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

A birth certificate in the record shows that the applicant was born on September 19, 1986. The applicant's 18th birthday, therefore, was September 19, 2004, and for the purpose of waiver, the applicant unlawful presence began on that date. The applicant left the United States on September 12, 2005, after accruing more than six months, but less than one year, of unlawful presence, and on that date she became inadmissible to the United States for three years pursuant to section 212(a)(9)(B)(i)(I) of the Act.

The applicant's last departure occurred on September 12, 2005. 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. A clear reading of the law reveals that the applicant is no longer inadmissible.

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