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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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MAY 05 2010

FILE:

[Redacted]
(SDO 2001 774 002)

Office: MEXICO CITY, MEXICO
(SANTO DOMINGO, DR)

Date:

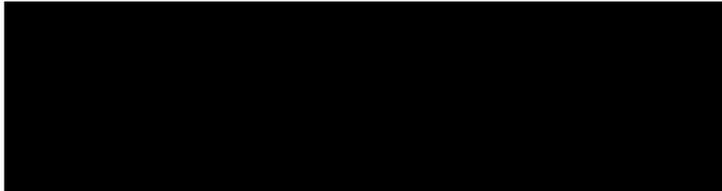
IN RE:



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:



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.

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 the applicant is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), and the waiver application is therefore moot. The district director shall notify the appropriate consular official that the applicant is not inadmissible to the United States.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to 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 a period of one year or more and seeking readmission within ten years of her last departure. The applicant's mother is a U.S. citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 3, dated September 1, 2006.

On appeal, counsel states that the district director failed to consider the factors enumerated by the Board of Immigration Appeals *en banc* in analyzing extreme hardship. *Form I-290B*, received October 4, 2006.

The record includes, but is not limited to, copies of the applicant's passport, an airline ticket, an employment letter and high school documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The district director found that the applicant had accrued unlawful presence of more than 365 days from 1999 to 2000. *Decision of the District Director*, at 2. However, the record reflects that the applicant had a Form I-485, Application to Register Permanent Residence or Adjust Status, pending from April 1, 1997 until March 14, 2001. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (now Secretary) as an authorized period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. See *United States Citizenship and Immigration Services Consolidated Guidance on Unlawful Presence*, at 33, dated May 6, 2009. As such, the applicant did not accrue unlawful

presence during this time. The record also reflects that the applicant was paroled into the United States on February 19, 2000, departed the United States on February 28, 2000 and has since remained outside the United States. Based on the record before it, the AAO does not find the applicant to have accrued unlawful presence in the United States for the purposes of section 212(a)(9)(B)(i) of the Act.

The appeal will be dismissed as the applicant is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), and the waiver application is therefore moot.

ORDER: The appeal is dismissed as the applicant is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), and the waiver application is therefore moot. The district director shall notify the appropriate consular official that the applicant is not inadmissible to the United States.