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



U.S. Citizenship
and Immigration
Services

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H6

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **MAY 17 2010**
CDJ 2004 712 892

IN RE: Applicant: [REDACTED]

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:

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, Mexico, and 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)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II); thus the relevant waiver application is moot. The matter will be returned to the director for continued processing.

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. The applicant is the spouse of a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, counsel states that the applicant was unlawfully present in the United States from September 1993 to August 1999. He conveys that the applicant's husband has been separated from the applicant since August 1999, and that he will continue to experience extreme hardship as a result of their separation. Counsel indicates that the applicant and her husband have a daughter who is being raised in the United States without the applicant. Counsel conveys that the applicant's wife is suicidal, which is causing psychological distress to her husband. Counsel maintains that living conditions in Mexico are appalling and the applicant's husband would suffer there because of its bleak economy and inferior educational system, and due to separation from his friends and family members in the United States.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in 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 . . . 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.

.....

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in September 1993 and remained until August 1999. She accrued unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until August 1999, when she left the country and triggered the ten-year bar, which rendered her inadmissible to the United States until August 2009. As the applicant is no longer subject to the ten-year bar, she is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Based on the record, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The waiver application filed pursuant to section 212(a)(9)(B)(v) of the Act is therefore moot. As the applicant is not required to file a waiver application, the appeal of the denial of the waiver will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be dismissed.

ORDER: The director's decision is withdrawn, the waiver application is declared moot, and the appeal is dismissed.