

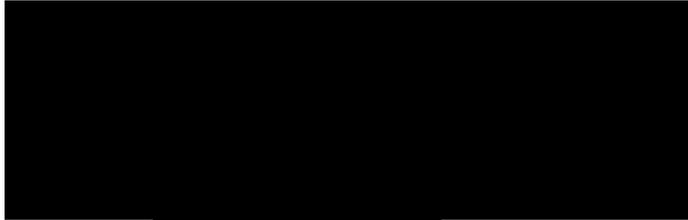
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE:



Office: MEXICO CITY (PANAMA)

Date:

MAY 17 2010

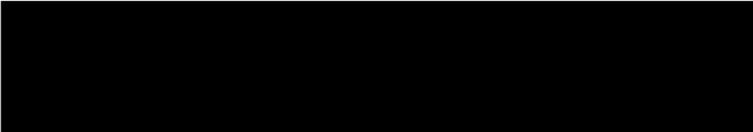
IN RE:



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:



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.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

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 The previous decision of the district director will be withdrawn, the application will be declared moot, and the appeal will be dismissed.

The applicant is a native and citizen of Colombia 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 married to a U.S citizen and has a U.S. citizen stepdaughter. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated November 14, 2007, the district director based his finding of inadmissibility on numerous admissions to the United States made by the applicant on his B2 visitor's visa. The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly.

In a statement dated December 10, 2007, counsel states that the district director ignored evidence of extreme hardship and failed to apply an appropriate balancing test in considering all the positive factors when he denied the applicant's application as a matter of discretion.

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-

(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, . . . is inadmissible.

(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 [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 was first admitted to the United States with a B2 visitor's visa in January 2001 with an authorized stay until February 25, 2001. The applicant did not depart the United States until June 2001, overstaying his authorized stay by approximately three months. In July 2001 he entered the United States again with his B2 visitor's visa and did not depart until December 2001. In January 2002 the applicant entered the United States for a third time, not departing until July 2002. The AAO notes that each of these stays did not exceed six months. Then, the applicant entered the United States for a fourth time using his B2 visitor's visa in August 2002 and departed in June 2003 staying in the United States for ten months. On July 5, 2003 the applicant entered the United States for the last time and on May 30, 2004 he departed, again staying for a period of ten months. Finally, on July 2, 2004 the applicant attempted to enter the United States at the Miami port of entry using his B2 visitor's visa, his previous overstays were discovered, and he was removed to Colombia.

The AAO notes that section 212(a)(9)(B)(i) of the Act does not provide for periods of unlawful presence to be calculated in the aggregate. Thus, the applicant's last period of unlawful presence for 180 days or more began on July 5, 2003, and ended on May 30, 2004. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure.

The applicant's last departure from the United States occurred on July 2, 2004, the date of his removal. It has now been more than three years since this departure, so the applicant is no longer inadmissible and does not require a waiver of inadmissibility. Therefore, the appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

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