

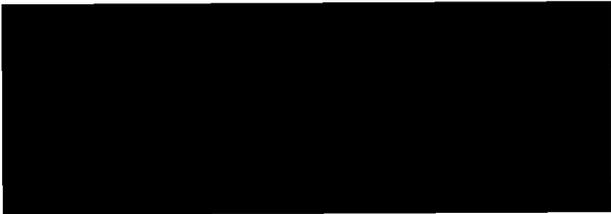
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date:

(CDJ 2004 741 975)

MAY 25 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED¹

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

¹ The applicant appears to be represented; however the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered, but the decision will be furnished only to the applicant.

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 The appeal will be dismissed, the previous decision of the district director will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Mexico who resided in the United States from November 1995, when she entered without inspection, to June 1998 or 1999, when she returned to Mexico. She 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 one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to return to the United States and reside with her husband.

The district director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director* dated November 16, 2007.

On appeal, it is asserted that the applicant's husband is suffering extreme emotional and financial hardship due to separation from the applicant, and he is unable to support two households while the applicant resides in Mexico and he is in the United States. *Brief in Support of Appeal* at 5-6. It is further asserted that the applicant's husband would be unable to secure employment in Mexico to support himself and the applicant due to current economic conditions there, and separation from his spouse if he remains in the United States would result in emotional hardship. *Brief* at 8. In support of the appeal, the following documentation was submitted: a copy of a naturalization certificate for the applicant's husband, copies of receipts for money wired to the applicant in Mexico, and copies of family photographs. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 –
 - (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 Secretary, 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 resided in the United States from November 1995, when she entered without inspection, until June 1998 or 1999, when she returned to Mexico.² She accrued unlawful presence in the United States from April 1, 1997, the date section 212(a)(9)(B) entered into effect, to about June 1999. The applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II) of the Act, the applicant was barred from again seeking admission within ten years of the date of her departure in about June 1999. It has now been more than ten 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 appeal is dismissed, the prior decision of the director is withdrawn, and the application for a waiver of inadmissibility is declared moot.

² The applicant stated to a consular official during her December 2006 interview for an immigrant visa that she departed the United States in either June 1998 or 1999, but was unsure of the year.