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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

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: NOV 15 2010

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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[redacted]

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,

Perry Rhew for
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act) and the waiver application is moot.

The applicant is a native and citizen of Mexico. He 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 one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Acting District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 4, 2008.

On appeal, the applicant states that the director erred in denying the applicant's waiver, that the director failed to adequately consider the evidence and that due to ineffective assistance of counsel the applicant was denied his due process rights. *Form I-290B*, received April 4, 2008.

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.
>
> . . . .

Counsel asserts on appeal that the applicant was denied his due process rights due to ineffective assistance of counsel. The Attorney General has recently issued a binding precedent superseding *Lozada*: *Matter of Compean, Bangaly and J-E-C-, et al.*, 24 I&N Dec. 710 (A.G. 2009). In *Compean*, the Attorney General held that the Constitution affords no right to counsel or effective assistance of counsel to aliens in immigration proceedings under the Sixth Amendment or the Due Process Clause of the Fifth Amendment. *Id.* at 711-27. *Compean* establishes three elements of proof and six documentary requirements that an alien must meet to prevail on a claim of deficient performance of counsel. *Id.* It is not necessary to examine counsel's assertion of ineffective assistance of counsel. In this case the remedy for the applicant would be to have additional evidence considered, which the AAO will do on appeal.

The record indicates that the applicant entered the United States without inspection for the first time on or about September 25, 1989. The applicant was subsequently deported on May 11, 1994.[1] The applicant entered without inspection again on July 16, 1994. After filing an adjustment of status application on June 12, 1998, the applicant was detained and deported on June 14, 2000, based on the reinstatement of his prior deportation order. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until June 12, 1998, the date he filed his adjustment of status application.

A clear reading of the law reveals that the applicant is no longer inadmissible based on his prior unlawful presence as more than ten years has passed since his departure. Based on the current facts, he does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is moot.

ORDER: The appeal is dismissed as the underlying application is moot.

[1] The AAO notes that the applicant has three other deportation orders, entered on March 26, 1991, June 1, 1992, and September 30, 1992. Based on his four prior deportation orders, the District Director will need to make a determination of whether the applicant needs to file a Form I-212 and, if so, render a new I-212 decision on its merits.