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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

OCT 29 2010

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO

Date:

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:

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 Acting District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 and seeking readmission within ten years of his last departure from the United States. The applicant is the child of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130).

In a decision dated April 15, 2008, the Acting District Director found that the applicant failed to establish extreme hardship to his U.S. citizen father as a result of his inadmissibility. The application was denied accordingly.

In the Notice of Appeal (Form I-290B) to the AAO, the applicant maintains that he is not inadmissible because his period of unlawful presence was tolled during the pendency of his Application to Extend/Change Nonimmigrant Status (Form I-539). Further, the applicant argues that the decision regarding his Form I-539 was erroneously decided. He contends that the denial was based incorrectly on the fact that his Form I-130 was denied, when he indicates that his Form I-130 was approved and provides proof of such approval. The applicant did not address the issue of extreme hardship on appeal.

The record indicates that the applicant entered the United States on or about February 2004 as a minor. On April 16, 2004, the applicant's eighteenth birthday, he began to accrue unlawful presence. On August 17, 2004, the applicant filed Form I-539. The applicant's Form I-539 was denied on July 13, 2005. The applicant voluntarily departed the United States in October of 2005.

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...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.

....

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

....

The applicant asserts that the decision in his Form I-539 was based on an incorrect fact that his Form I-130 was not approved. The applicant has established that his Form I-130 was approved on October 25, 2005. However, the record reveals that the applicant's Form I-130 was previously denied on June 10, 2005. As such, his Form I-539, which was decided on July 13, 2005, was properly denied. Moreover, although the applicant demonstrated that he filed a nonfrivolous application for a change of status, he did not show that such application was filed "before the date of expiration of the period of stay authorized by the Attorney General," that he was admitted to the United States when his Form I-539 was filed, or that he ever had any legal status in the United States. The applicant is, therefore, inadmissible under section 212(a)(9)(B)(i)(I) of the Act and must establish extreme hardship to a qualifying family member in order to be granted a waiver under section 212(a)(9)(B)(v) of the Act.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not provided any new evidence regarding his qualifying relative's extreme hardship on appeal. As such, he has not met his burden.

ORDER: The appeal is dismissed.