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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

H6

[REDACTED]

FILE:

[REDACTED]

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ, MEXICO)

Date:

FEB 25 2011

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:

[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.

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 \$630. 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.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States in October 1994 without inspection. On December 11, 2002, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On October 7, 2003, an immigration judge granted the applicant voluntary departure to depart the United States by November 6, 2003. On October 16, 2003, the applicant filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (Board). On December 9, 2004, the Board dismissed the applicant's appeal and ordered her to depart the United States within 30 days of the date of the order. On December 15, 2004, the applicant's United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On January 5, 2005, the applicant voluntarily departed the United States. On September 29, 2005, the applicant's husband filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On November 1, 2005, the applicant's Form I-129F was approved. On February 10, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On September 16, 2006, the applicant's Form I-130 was approved. On February 9, 2007, the District Director denied the applicant's Form I-601, finding that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative. In June 2007, the applicant reentered the United States without inspection. On March 4, 2008, the applicant filed a Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360). On August 25, 2009, the applicant and her husband divorced. On June 19, 2010, the applicant's Form I-360 was approved. On August 31, 2010, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485).

The applicant 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 her last departure from the United States. Additionally, the AAO notes that the applicant may also be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted. The record establishes that the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until December 11, 2002, the date the applicant filed her Form I-589. The applicant departed the United States on January 5, 2005. However, she reentered the United States in June 2007 without inspection.

The AAO notes that the filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility for the purpose of establishing eligibility within the requirements of a related application. The applicant's eligibility to apply for permanent resident status in the present proceeding is dependent on the approval of the related Form I-130 petition filed by her spouse.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage relationship between the applicant and her spouse. However, on August 25, 2009, the

applicant and her husband divorced. Therefore, there is no valid underlying petition to support the applicant's present Form I-601, and the appeal must be dismissed.

The AAO notes that the applicant may now, if she chooses to do so, file a new Form I-601 in relation to her current Form I-485.

ORDER: The appeal is dismissed.