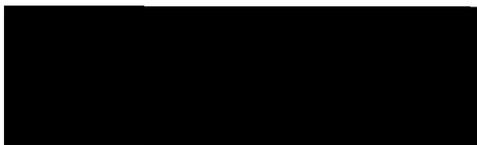


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **APR 10 2012** OFFICE: CHICAGO, ILLINOIS

File: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year, voluntarily departing the United States, and again seeking admission within 3 years of her last departure from the U.S. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant 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. See *Decision of the Field Office Director*, dated September 25, 2009.

On appeal, the applicant contests inadmissibility for unlawful presence in the United States. See *Form I-290B*, Notice of Appeal or Motion and *Applicant's Supporting Statement*, received October 23, 2009.

The record contains but is not limited to: I-290B and applicant's statement; Forms I-601, I-485 and denials of each; Form I-824 and Notice of Parole; copies of applicant's 10-year multiple entry V-1 visa and related visa records; Form I-130 Receipt Notice; USCIS letter that I-130 priority date is current; USCIS letter admitting inability to locate Form I-130; Form I-130 approval dated February 3, 2009; applicant's sworn statement; previous Form I-485 and denial. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- ...

(I) has been unlawfully present in the United States for a period of more than 180 days but less than one year, voluntarily departs the United States (whether or not pursuant to section 244(e)) prior to 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.

...

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant was issued a V1 nonimmigrant visa on February 27, 2003, initially valid until February 26, 2005. The applicant received one visa extension until February 22, 2007 and another until January 18, 2008. The record contains no evidence of any further extension(s). The applicant departed the United States for two weeks in December 2008, and was paroled into the U.S. on January 9, 2009. The applicant accrued unlawful presence from January 18, 2008 until December 2008. As the applicant was unlawfully present in the United States for more than 180 days but less than one year, she was found to be inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

An application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The AAO notes that the Field Office Director denied the applicant's Form I-485 application on the same date as the denial of the Form I-601 application. The applicant was not afforded the opportunity to pursue the appellate process prior to the denial of the Form I-485. The AAO finds that the denial of the Form I-485 was premature and that, as of today, the applicant is still seeking admission by virtue of her application to adjust status. The applicant's last departure from the United States occurred in December 2008. It has now been more than three 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 under section 212(a)(9)(B)(i)(I) of the Act.

The AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act. Accordingly, the appeal will be dismissed as the waiver application filed pursuant to section 212(a)(9)(B)(v) of the Act is moot.

Because the AAO finds that the applicant is not inadmissible and the appeal will be dismissed as moot, there remains no basis in the present record for the denial of the applicant's Form I-485, application for adjustment of status. Accordingly, the applicant's file will be returned to the Field Office Director for further action consistent with this decision.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The applicant's application for adjustment of status will be returned to the Field Office Director to be reopened and for continued processing consistent with this decision.