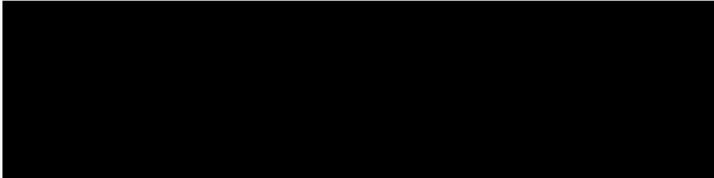


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: **DEC 08 2012** Office: SAN BERNARDINO, CA

FILE:

IN RE: Applicant:

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: 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, San Bernardino, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

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, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside in the United States with her lawful permanent resident mother.

In her decision of May 13, 2011, the acting field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant asserts that due to her medical condition, she is not capable of living on her own.

The record includes, but is not limited to: statements from the applicant and her mother; statements from the applicant's relatives and acquaintances; a statement from a doctor regarding the current health of the applicant's mother; medical documents and statements from doctors regarding the applicant's medical condition; utility bills for the applicant's mother; a bus ticket from [REDACTED] receipts for money orders payable to the applicant; letters regarding the employment of the applicant's mother; psychological and audiological evaluations of the applicant; a letter from the applicant's former high school counselor; and internet articles relating to criminal activity in Mexico. The entire record was reviewed and all relevant evidence considered in reaching this decision.

It is noted that record contains several documents written in the Spanish language without the required English-language translations.¹ Any document in a foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English-language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Accordingly, these documents will not be considered in this proceeding.

Section 212(a)(9) states in pertinent part:

(B) Aliens Unlawfully Present.-

¹ The record also contains a letter from a doctor dated October 12, 2010, written in the Spanish language that appears to have been translated. However, the translation was not certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The director found the record to reflect that the applicant had entered the United States in 1998 without inspection and had remained in the United States until August 15, 2010, when she voluntarily departed for Mexico. Based upon this history, the director determined that the applicant had accrued unlawful presence in excess of one year. A review of relevant data bases, however, has identified a second record [REDACTED] for the applicant that indicates she entered the United States on June 13, 1997, with a Border Crossing Card.

Although the record does not indicate the type of Border Crossing Card used by the applicant to enter the United States in 1997, the AAO notes that prior to April 1, 1998, the legacy U.S. Immigration and Naturalization Service issued Nonresident Alien Border Crossing Cards (Forms I-186 and I-586) to Mexican nationals. Aliens admitted with Border Crossing Cards issued prior to April 1, 1998 generally were not issued a Form I-94 specifying a period of authorized stay.

For the purposes of determining unlawful presence, a nonimmigrant who is not issued a Form I-94 is considered a "non-controlled nonimmigrant" admitted for duration of status. If USCIS finds a non-controlled nonimmigrant to have committed a status violation while it is adjudicating a request for an immigration benefit, unlawful presence begins to accrue on the day after the request is denied. If an immigration judge makes a determination of a nonimmigrant status

violation in exclusion, deportation, or removal proceedings, unlawful presence begins to accrue the day after the immigration judge's order is issued.²

The record does not demonstrate that while the applicant was residing in the United States, an immigration officer or an immigration judge determined that she had violated her nonimmigrant status. In the absence of such evidence, the AAO cannot conclude that the applicant accrued unlawful presence in the United States prior to her August 15, 2010 departure for Mexico.

We note the consular worksheet in the record that reflects the applicant testified to having entered the United States in 1998 and observe that she did not indicate at the time of her consular interview that she had been admitted using a Border Crossing Card. However, the applicant was a small child at the time she arrived in the United States and unlikely to have been aware of the specifics of her admission. Accordingly, we do not find her recollection of this event to contradict the information provided in USCIS databases.

As the record does not establish that the applicant accrued unlawful presence in the United States, she is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and is not required to file a waiver. Accordingly, the appeal will be dismissed as the underlying waiver application is unnecessary.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.

² Memorandum from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* (May 6, 2009).