

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



HC

Date: **DEC 19 2012** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Applicant: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director of the California Service Center, Laguna Niguel, California. 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 seeks a waiver of inadmissibility 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 again seeking admission within ten years of his last departure from the United States. The applicant is the child of a United States citizen.

The Service Center Director found that the applicant failed to show that a form I-485, Application to Register Permanent of Residence or Form I-821, Application for Temporary Protected Status, had been filed with USCIS. The application was denied accordingly. The director's decision further notes that the applicant was a minor when she entered the United States and that no period of time for an alien under age 18 is determined to be unlawful presence, so the filing of the Form I-601 was deemed unnecessary. *See Decision of the Service Center Director* dated April 25, 2011.

On appeal, the applicant submits copies of Form I-797C receipt notices for a Form I-130, Petition for Alien Relative under WAC10-023-12857, and for a Form I-601, Application for Waiver of Grounds of Inadmissibility.

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-

....

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

The viability of the Form I-601 is dependent on an adjustment of status application that is based on an approved petition. Although the applicant is the beneficiary of an approved Form I-130, the record shows that the applicant has not filed an I-485, Application to Register Permanent of Residence. The instructions for Form I-601 explain that an applicant must submit evidence of a Form I-485 or Form I-821 having been accepted by USCIS.

ORDER: The appeal is dismissed as no Form I-485 has been accepted by USCIS.