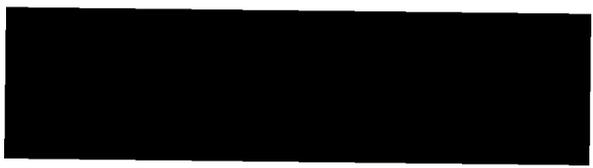


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **FEB 01 2012** Office: MEXICO CITY (CIUDAD JUAREZ) 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:

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 Field Office Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the waiver application will be denied.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in April 1998 and did not depart the United States until February 2008. The applicant accrued unlawful presence during this entire period and was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse. The record indicates that, during the pendency of this appeal, the applicant was apprehended entering the United States from Mexico without admission or parole on December 28, 2011 and was removed to Mexico the following day. *See Form I-213, Record of Deportable/Inadmissible Alien, and Forms I-867A/I-867B, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act/Jurat for the Record*, all dated December 29, 2011.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, dated July 20, 2009.

In support of the appeal, the applicant submits information including a statement from applicant's wife; medical records and charges; a letter regarding mortgage insurance; the qualifying relative's social security statement; financial documents, including bank and credit card statements, as well as a letter regarding fees owed to prior legal counsel; and information about the qualifying relative's job search. The record also contains documentation submitted by counsel in support of the original waiver request, including information responding to a USCIS notice regarding insufficient evidence of extreme hardship. Counsel originally submitted a brief supported by: the statement of applicant's wife, as well as of applicant himself; the statements of each of the qualifying relative's children, several relatives, and colleagues; a Psychological Evaluation and family photographs; a letter from the applicant's employer confirming his ability and income; a tax registration certificate; a naturalization certificate; and the qualifying relative's real estate license and commission as a notary public. Counsel later supplemented the record by submitting information regarding the qualifying relative's psychiatric treatment and anti-depressant prescription during 2002; the qualifying relative's job search efforts; bank, credit card, and other financial information; and 2007 tax returns and related information regarding an installment agreement for payment of delinquent taxes.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 (Secretary) 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...

Section 212(a)(9)(C) of the Act provides, in pertinent part:

Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General. - Any alien who-

....

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception. – Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive clause (i) in the case of an alien who is VAWA self-petitioner ...

The applicant entered the United States without authorization in 1998 and departed in 2008, having accrued unlawful presence during the entire period. In addition, the applicant was removed from the United States under expedited removal on December 29, 2011 after illegally reentering the United States the previous day. The applicant, therefore, is also inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I).

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for permission to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). To avoid inadmissibility under this section, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States, *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure occurred on December 29, 2011 and he must remain outside the United States for ten years before he is eligible for permission to reapply. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B) of the Act.

Having found the applicant statutorily ineligible for permission to reapply for admission at this time, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative or whether he merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.