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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: JUL 30 2012 Office: ATLANTA, GA

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.

Thank you,

A large, stylized 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, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the 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 (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within ten years of his last departure from the United States. The applicant's spouse and child are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated May 21, 2010.

On appeal, the applicant's spouse details hardship to his spouse. *Form I-290B*, received June 16, 2010.

The record includes, but is not limited to, the Form I-290B, medical records and financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the 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.

....

(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 [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.

The record reflects that the applicant entered the United States without inspection in September 1994; he filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on August 26, 1997; he subsequently departed the United States and sought admission to the United States on December 2, 2002; he was permitted to withdraw his application for admission on January 7, 2003; he subsequently entered the United States without inspection; he filed a second Form I-485 on February 22, 2008; his first Form I-485 was denied on April 27, 2009 due to abandonment; and his second Form I-485 was denied on May 24, 2010. The applicant accrued unlawful presence during from April 1, 1997, the effective date of unlawful presence provisions under the Act, until August 26, 1997, the date he filed his first Form I-485. The applicant accrued 147 days of unlawful presence prior to his departure from the United States. As such, he is not inadmissible to the United States under either section 212(a)(9)(B)(i)(I) or (II) of the Act and he does not require a section 212(a)(9)(B)(v) waiver.

The AAO finds that as the applicant is not inadmissible to the United States under either section 212(a)(9)(B)(i)(I) or (II) of the Act. Nor does the record show that the applicant is inadmissible under other sections of the Act. Accordingly, the appeal will be dismissed as the waiver application is unnecessary.

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