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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



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H6

DATE: MAR 12 2012 OFFICE: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

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:

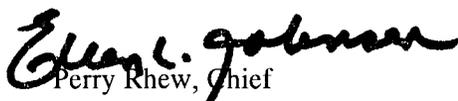
SELF-REPRESENTED

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 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, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further action.

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 more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and also did not show that he merited a favorable exercise of discretion. *See Decision of Field Office Director* dated October 27, 2009. The Field Office Director denied the application accordingly. *Id.*

On appeal, the applicant's spouse contends she experiences financial hardship because without the applicant's financial support, she has fallen behind on all of her bills, and she cannot earn money because of a medical condition. The spouse adds that her bulging disc is so painful it prevents her from performing everyday duties. The spouse indicates that her son Andrew needs the applicant as a father figure, and that he has gotten in trouble with the legal system without him.

The record includes, but is not limited to, evidence of birth, marriage, residence, and citizenship, letters from the applicant's spouse, family, employers, and friends, documents related to criminal proceedings, disability claim forms, financial documents, other applications and petitions filed on behalf of the applicant, and evidence of removal proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

....

(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.

At a consular interview, the applicant admitted under oath that he entered the United States without inspection in 1995, and remained in the country until he returned to Mexico in July 2008. The applicant accrued more than one year of unlawful presence and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

The record also contains documentation reflecting that an individual named [REDACTED] who was issued the same alien registration number as the applicant,¹ was apprehended by immigration officials as part of a worksite enforcement operation in [REDACTED] in 2006. Subsequently, [REDACTED] fingerprints were taken, he was placed in removal proceedings, he was ordered removed on April 21, 2006, and his departure was verified on April 25, 2006. However, an FBI fingerprint check performed in 2008 on the I-601 waiver applicant, [REDACTED] does not show that the applicant's fingerprints match those of the individual removed in 2006, although it does show the applicant's multiple DUI arrests from the years 1998 to 2007. Furthermore, biological information on [REDACTED] and the applicant, such as residence, date of birth, and marital status do not indicate they are the same person. As such, based on the present record, the AAO cannot determine whether the I-601 waiver applicant is the same person who was removed in 2006. This determination is necessary for a complete analysis of the applicant's inadmissibility.

Therefore, the AAO remands the matter to the Field Office Director for further examination of whether the I-601 waiver applicant and the individual ordered removed in 2006 are the same person. Should the Field Office Director determine that they are the same person, evidence to support that determination shall be included in the record, any additional grounds of inadmissibility addressed in a new decision and that decision certified to the AAO for adjudication. In the alternative, should the Field Office Director determine the I-601 waiver applicant and the individual ordered removed in 2006 are not the same person, the portion of the record related to the I-601 waiver applicant shall be placed in a separate file, the applicant shall be given a new alien registration number, and the record returned to the AAO for adjudication.

ORDER: The matter is remanded to the Field Office Director for further proceedings consistent with this decision.

¹ USCIS electronic records for [REDACTED] are in the name [REDACTED].