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



H6

[REDACTED]

DATE: **MAR 29 2012** OFFICE: NORFOLK, VIRGINIA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

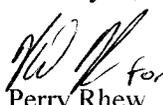
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:
[REDACTED]

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, Norfolk, Virginia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Worker (Form I-140). The applicant through counsel contests the finding of inadmissibility, but seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(9)(B)(v), in order to reside in the United States with her Lawful Permanent Resident parent and child. Counsel also requests that the United States Citizenship and Immigration Services (USCIS) reopen the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) and adjudicate the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601).

The Field Office Director concluded that the applicant was ineligible for an adjudication and approval of her Form I-601 application as there were no underlying applications for benefits pending. *See Decision of the Field Office Director*, dated February 14, 2011. The applicant through counsel appealed the decision by submitting a Notice of Appeal or Motion (Form I-290B), dated March 3, 2011.

Section 212(a)(9)(B)(i)(II) 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

...

The record reflects that the applicant entered the United States without inspection by immigration officials in or around June 1990, and that through current counsel, jointly filed Form I-140 and Form I-485 on January 5, 2004. The record also reflects that the applicant voluntarily left for Mexico on or about August 3, 2006, and was paroled into the United States on August 17, 2006, for the purpose of pursuing the pending adjustment of status application, and has remained to date. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until on or about August 3, 2006, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

As noted above, the applicant filed Form I-485 on January 5, 2004. The record reflects that USCIS issued to the applicant and previous counsel a Notice of Intent to Deny (NOID) the Form I-485 on September 16, 2008. The NOID explained that the applicant was inadmissible under section 212(a)(9)(B) of the Act and indicated that the applicant could apply for a waiver of the inadmissibility provision, but had to submit within 30 days (33 days if mailed) a Form I-601 along with the appropriate filing fee and any other evidence in support of the waiver request. The record reflects that the applicant did not respond to the NOID. The record further reflects that USCIS denied the applicant's Form I-485 application on August 10, 2009, finding that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and was ineligible to adjust status to that of Lawful Permanent Resident.

As the applicant's Form I-485 was denied in August 2009, the Form I-601 submitted by the applicant through current counsel on July 12, 2010, cannot be reviewed and adjudicated by the AAO, as there is no underlying application for permanent residency relating to the applicant pending at this time. The appeal will be dismissed.

ORDER: The appeal is dismissed.