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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

[REDACTED]

Date: **MAR 30 2012**

Office: MONTERREY, 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:

[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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Monterrey, Mexico. 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 the Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 9, 2010.

On appeal, counsel for the applicant asserts that the Field Officer's decision was incorrect as the applicant has demonstrated that his spouse will experience extreme hardship if the waiver is not granted, and that the applicant's spouse is unable to relocate to Mexico.

The record reflects that on November, 30, 2011, the applicant's spouse forwarded a letter to USCIS, stating that she would like to withdraw the Form I-130 for the applicant. The letter included a statement and signature from the petitioner attesting to her wish to withdraw the Form I-130. Accordingly, the Form I-130 Petition for Alien Relative is withdrawn. This withdrawal cannot be retracted. 8 C.F.R. § 103.2(b)(6).

The filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility, which in this case is a requirement for an immigrant visa under section 201(b) of the Act. The applicant's eligibility to apply for an immigrant visa is dependent on approval of the Form I-130 petition filed by his spouse.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage relationship between the applicant and his spouse. In the absence of an approved I-130 petition, the applicant is not entitled to an immigrant visa, and his application for an immigrant visa cannot be approved regardless of whether he is admissible or, if not, whether a waiver is available for any ground of inadmissibility.

In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot. The appeal for the denial of the waiver must therefore be dismissed.

ORDER: The appeal is dismissed.