

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

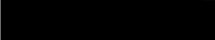


H6

DATE: **OCT 16 2012**

OFFICE: HARLINGEN, TEXAS

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Harlingen, Texas, denied the waiver request, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be dismissed as the underlying waiver application is unnecessary.

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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days, but less than one year, and seeking admission within three 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 Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility. Rather, she 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 husband and child.¹

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated April 29, 2010.²

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) failed to consider significant evidence of hardship such as an affidavit from a former Social Study Investigator for the State of Texas and a documentary report, and in so doing, erroneously denied the waiver application. *See Notice of Appeal or Motion (Form I-290B)*, dated May 28, 2010.

The record includes, but is not limited to: prior and current counsels' briefs and correspondence; letters of support; identity, marriage, divorce, employment, financial, and court documents; photographs; and a documentary. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

¹ The AAO notes that in her brief submitted on appeal, counsel indicates that the applicant is seeking a waiver under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). As the applicant was determined to be inadmissible under section 212(a)(9)(B)(i)(I) of the Act, the AAO will determine whether the applicant meets the requirements of section 212(a)(9)(B)(v) of the Act.

² The AAO notes that in his decision, the Field Office Director states the applicant has "failed to provide sufficient evidence to overcome the extreme hardship for unlawful presence in the United States." *Decision of the Field Office Director, supra*. In her brief submitted on appeal, counsel contends that the Field Office Director's entire decision must be called into question as it misstates the standard by which a waiver application should be evaluated. *See Brief from Counsel*, dated June 16, 2010.

(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 (whether or not pursuant to section 244(e)) 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, or

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection by immigration officials on August 3, 2002. She was apprehended by U.S. officials who were executing a search/arrest warrant on February 6, 2003, and was taken into custody and charged with violating the provisions of 8 U.S.C. § 1325(a)(1), for improperly entering the United States. On February 7, 2003, the applicant was convicted of violating 8 U.S.C. § 1325(a)(1), and received a suspended sentence of 90 days and a fine, and was permitted to voluntarily return to Mexico. She subsequently entered the United States on July 20, 2006, upon presenting a Border Crossing Card, and has remained to date.

The applicant accumulated unlawful presence from August 3, 2002, until February 7, 2003; a period of more than 180 days, but less than one year. However, the applicant remained outside the United States for the requisite three year period before her entry on July 20, 2006. Accordingly, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(B) of the Act, and withdraws the Field Office Director's finding that the applicant is inadmissible under section 212(a)(9)(B)(i)(I) of the Act. Accordingly, the applicant's Form I-601 application is not necessary.

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