

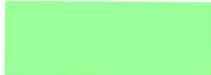
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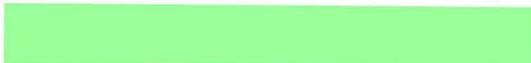
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 21 2013** OFFICE: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: 

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 "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center and was dismissed by the Administrative Appeals Office (AAO) on appeal. This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying application will be dismissed as unnecessary.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without admission or parole on April 5, 2005 and has remained in the United States since that date. The applicant 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 Director sent a notice of intent to deny (NOID) to the applicant on February 17, 2011 requesting a copy of the applicant's Form I-797C notice of action showing receipt of his Form I-485 or I-821. The Director did not receive a Form I-797C from the applicant and determined that the applicant failed to offer a complete response to the NOID. Accordingly, the Director denied the applicant's waiver of inadmissibility. *See Decision of Director*, dated March 24, 2011. On appeal, the AAO determined that the applicant had entered the United States without admission or parole after being unlawfully present in the United States for a year or more and found the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act. *See Decision of the AAO*, dated November 6, 2012.

The applicant has submitted a motion to reopen or reconsider the dismissal of her appeal. Based on the new facts in the record concerning the applicant's entry into the United States, the motion to reopen will be granted. Counsel for the applicant asserts that the applicant's spouse would suffer extreme hardship upon separation from or relocation with the applicant.

In support of the applicant's motion to reopen and reconsider, the applicant submitted documents concerning the applicant's physical presence in Mexico and his entry into the United States. The applicant also resubmitted the documents that accompanied his original application and appeal. The entire record was reviewed and considered in rendering this decision.

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 [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 applicant, on November 17, 2010, filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, stating that he is subject to the unlawful presence bar. It is noted that the applicant's Form I-601 application is unclear concerning his dates of residence in the United States, as the years of residence are listed with three numerals rather than four. However, in his motion to reopen and reconsider, the applicant asserts that his only entry to the United States without admission or parole was on April 5, 2005 and that he has remained in the United States since that date. The applicant also submitted evidence demonstrating his residence in Mexico in the months of May, September, and October 2001. As the applicant's assertion is consistent with the evidence in the record, the AAO finds that the applicant entered the United States without admission or parole on April 5, 2005 and has not departed since that date. As such, the applicant is not inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) or section 212(a)(9)(C)(i)(I) of the Act. As the applicant is not inadmissible, the waiver application is unnecessary.

ORDER: The motion is granted, the prior AAO decision is overturned, and the underlying application is dismissed as unnecessary.