



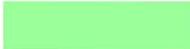
**U.S. Citizenship  
and Immigration  
Services**

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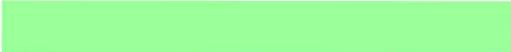


Date: **SEP 03 2013**

Office: ANAHEIM

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch of behalf of the District Director, Mexico City, Mexico. The appeal will be dismissed, the prior decision of the district director will be withdrawn and the application for a waiver of inadmissibility declared unnecessary.

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without inspection in October 2007 and did not depart the United States until October 2008. The applicant was thus 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. 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 lawful permanent resident parent.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 13, 2010.

On appeal, filed February 13, 2010, and received by the AAO May 23, 2013, counsel for the applicant states that documentation will be presented to establish extreme hardship. No subsequent documentation was received from counsel. The entire record was reviewed and considered in rendering this decision.

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-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than one year, voluntarily departed the United States (whether or not pursuant to section 244(3)) prior to 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 ....

....

(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....

As noted above, the applicant accrued unlawful presence from October 2007 until his departure in October 2008. The applicant was, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure.

As the record establishes, the applicant's last departure occurred in October 2008, it has now been more than three years since the departure that made the applicant inadmissible. A clear reading of the law reveals that the applicant is no longer inadmissible pursuant to section 212(a)(9)(B) of the Act.

**ORDER:** The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.