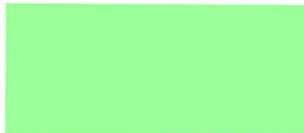


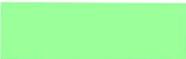
(b)(6)

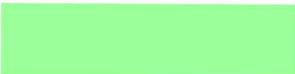
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



DATE: **MAY 19 2014**

Office: EL PASO FIELD OFFICE

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:

SELF-REPRESENTED

INSTRUCTIONS:

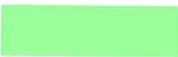
Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
f-

Ron Rosenberg  
Chief, Administrative Appeals Office



**DISCUSSION:** The waiver application was denied by the Field Office Director, El Paso, Texas, 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 entered the United States in 2001 without inspection. The applicant is the spouse of a United States citizen. The applicant submitted an Application for Waiver of Grounds of Inadmissibility (Form I-601) in April 2013, indicating that she is subject to a bar to admissibility for having been unlawfully present in the United States in excess of either 180 days or one year and subsequently departed. However, there is no evidence in the record that the applicant has left the United States since her arrival in 2001.

The field officer director determined that as the applicant had not departed the United States, she is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act and no purpose would be served by granting the waiver. The waiver application was denied accordingly. *Decision of the Field Office Director* dated August 13, 2013.

On appeal the applicant asserts in the Notice of Appeal (Form I-290B) that she qualifies for relief for the purpose of family reunification. The record contains a statement from the applicant's U.S. citizen spouse and a letter from a medical doctor regarding the spouse's medical condition. 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-

....

(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...

On appeal the applicant states that she has had no departures from the United States since her arrival in 2001, but asserts that she qualifies for a waiver for family reunification and that her U.S. citizen spouse suffers extreme hardship. According to section 212(a)(9)(B)(i) of the Act, an alien must depart the United States after accruing more than 180 days or one year of unlawful presence in order to trigger the three-year or 10-year bar to admission. The alien cannot violate the provision unless the alien leaves the United States. *See Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009.

In this case, the applicant states that she has never departed the United States and there is no evidence in the record that she has left since her arrival in 2001. As noted, section 212(a)(9)(B) of the Act requires that the applicant leave the United States before found to be inadmissible for unlawful presence. The applicant is not inadmissible for unlawful presence since she has not left the country. For the above reasons, the Form I-601 was improperly filed. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.