



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

H2



FILE: [REDACTED] Office: NEWARK, NJ

Date: NOV 09 2005

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The District Director, Newark, NJ denied the application. 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 Italy who was found 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 is a sister of a United States citizen and is seeking a waiver of inadmissibility to remain in the United States with her brother and his family.

Section 212(a)(9)(B) 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 record indicates that the applicant arrived in the United States on June 13, 1982 and was authorized to remain until August 12, 1982. She departed the United States at some time after September 3, 1999 the date the record indicates she obtained advance parole to travel to Italy and before December 13, 1999 when she was paroled back into the United States. For purposes of determining inadmissibility under Section 212(a)(9)(B) of the Act, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until October 19, 1998, the date of her proper filing of the Form I-485. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams*, Executive Associate Commissioner, Office of Field Operations, June 12, 2002. The applicant was unlawfully present in the United States for more than eighteen (18) months. She is therefore inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one (1) year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship the applicant herself would experience upon removal, or hardship that would be experienced by one of the applicant's relatives who is not a U.S. citizen or lawful permanent resident spouse or parent upon the applicant's removal, is irrelevant to the proceeding. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The notice of intent to deny indicates that the waiver application would be denied because the applicant had no U.S. citizen or lawfully resident spouse or parent. *See Notice of Intent to Deny Waiver*, December 11, 2003. The applicant submitted no information to rebut the conclusion of the district director and the application was denied on January 16, 2004.

On appeal, the Applicant submitted affidavits from family members and a copy of a cover letter indicating that she had filed those affidavits before the denial of her application was issued. *See Form I-290B, Notice of Appeal to the Administrative Appeals Unit*. The affidavits provide evidence related to the hardship that the applicant's removal would cause to the applicant and to her brother and two nieces, all non-qualifying family members. Timely receipt and consideration of the affidavits would not have affected the decision to deny the waiver.

No evidence has been brought forward on appeal to indicate that the applicant has a United States citizen or lawful permanent resident spouse or parent. The information that the applicant provided on appeal concerning potential hardship to the applicant, her brother and nieces is irrelevant to the decision. There is no evidence that the applicant has a qualifying relative. As a result, she has not established that her inadmissibility would cause extreme hardship to a qualifying relative.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.