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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: NEWARK, NJ

Date: DEC 05 2006

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility

ON BEHALF OF APPLICANT:

[REDACTED]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, NJ, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i), for having entered the United States without inspection on July 15, 1996. The applicant is married to a U.S. citizen and is the beneficiary of an approved relative petition. The applicant is seeking a waiver of inadmissibility.

The district director concluded that the applicant was not eligible for a waiver of inadmissibility because he entered the United States without inspection and was not eligible for relief under Section 245(i). The application was denied accordingly. *Decision of the District Director*, dated February 14, 2005.

On appeal, counsel asserts that the applicant states that he is eligible for a waiver section 245(i) relief and thus merits a favorable exercise of discretion. *Counsel's Brief*, April 7, 2005.

The AAO notes that the record contains the applicant's Alien Relative Approval Notice, which shows a priority date of April 22, 2002, making him ineligible for relief under Section 245(i) of the Act. Counsel submits no documentation to show that the applicant has any other petitions that would affect his eligibility for Section 245(i) relief. The record also contains the applicant's Form I-601, which states that he entered the United States without inspection.

Section 245 of the Act states in pertinent part:

(a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if

- (1) the alien makes an application for such adjustment,
- (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
- (3) an immigrant visa is immediately available to him at the time his application is filed.

....

(i) (1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

(A) who--

- (i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d)) of--

(i) a petition for classification under section 204 that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 212(a)(5)(A) that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000; may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence.

There is no waiver of inadmissibility available for entry without inspection except for those applicants eligible for section 245(i) of the Act. Therefore, because the applicant entered the United States without inspection and does not qualify for relief under Section 245(i), he is statutorily ineligible for relief under any section of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.