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U.S. Citizenship
and Immigration
Services



FILE:



Office: BANGKOK, THAILAND

Date:

MAR 01 2004

IN RE:

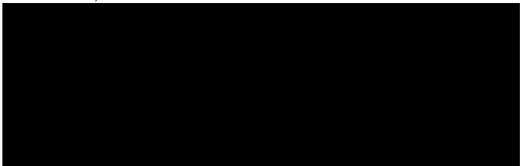
Applicant:



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:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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 waiver application was denied by the District Director, Bangkok, Thailand. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of Thailand who was found to be inadmissible to the United States by a Consular officer under 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 a period of one year or more. The applicant is the beneficiary of an approved Petition for Alien Relative as the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to travel to the United States and reside with her spouse.

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 accordingly. *See District Director Decision* dated October 28, 2002. The decision was affirmed by the AAO on appeal. *See AAO decision*, dated April 21, 2003.

The record reflects that the applicant was admitted to the United States on March 23, 1990, as a nonimmigrant fiancée. She married the petitioner on April 8, 1990. On September 26, 1991, the applicant divorced her prior husband upon whom her conditional status was based. Her conditional status expired on August 16, 1992, and she remained in the United States until March 11, 2002. The applicant married her present spouse, a naturalized U.S. citizen on May 3, 1996.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until March 11, 2002, the date of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

On appeal the applicant stated that she did not realize that by divorcing her first husband, she would not be allowed to remain in the United States. The applicant discusses her separation with her husband and her husband's responsibility to take care of his elderly parents and grandfather.

On motion, counsel asserts that Citizenship and Immigration Service (CIS) failed to correctly assess extreme hardship to the applicant's spouse. To support his assertion counsel submits a brief, in which he states that the applicant's spouse is a U.S. citizen, has minimal family ties outside the United States and may not find employment in Thailand if the applicant's waiver application is not approved and he decides to relocate with her in Thailand.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

- (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 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 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.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act regarding fraud, misrepresentation and unlawful presence in the United States and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a 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 an extreme hardship on a qualifying family member. Once 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 issues presented in the motion to reconsider by counsel were thoroughly discussed by the district director and the AAO in their prior decisions. No new issues have been presented for consideration.

A review of the all the factors presented, and the aggregated effect of those factors, indicates that the applicant's spouse would suffer hardship due to separation. The applicant has failed, however, to show that the qualifying relative would suffer extreme hardship over and above the normal social and economic disruptions involved if the applicant was not permitted to travel to the United States at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior district director and AAO decisions will be affirmed.

ORDER: The prior district director and AAO decisions are affirmed.