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U.S. Department of Homeland Security

20 Mass. Ave., N.W., Rm. A3042

Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

FILE:

[REDACTED]

Office: ATHENS, GREECE

Date:

2005

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the previous decision of the officer in charge will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Greece who was found to be inadmissible to the United States pursuant to § 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. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant asserts that she is experiencing extreme hardship, because it is difficult to care for her two children by herself in Greece without the applicant. On appeal, the applicant submits letters written by the applicant and herself, a letter from the headmaster of her daughter's school, a letter from her son's kindergarten teacher, a letter from the children's pediatrician, copies of her and her children's airline tickets demonstrating the dates of their travel to and from the United States, and other documentation.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the 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 or removal, . . . is inadmissible.

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.

In the present application, the record indicates that the applicant entered the United States on a visitor visa on or about September 21, 2001. The applicant stated that she left the United States on September 3, 2002. The copies of the airline tickets provide support for these dates, despite the lack of CIS records for the applicant. Given that it may be presumed that the applicant was granted six months in which to remain in the United

States, she would have accrued unlawful presence from March 20, 2002 to September 3, 2002. This is a period of less than 180 days. Since CIS records do not show that the applicant was unlawfully present for over 180 days, the applicant does not appear to be subject to the bar described at § 212(a)(9)(B)(i)(I) of the Act. The applicant therefore does not require a waiver of inadmissibility.

ORDER: The appeal is sustained, the previous decision of the officer in charge will be withdrawn, and the application declared moot.