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U.S. Citizenship  
and Immigration  
Services

A3

[REDACTED]

FILE:

Office: NEWARK

Date: NOV 29 2006

IN RE:

[REDACTED]

APPLICATION:

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

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Newark, NJ denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant, [REDACTED] (Mr. [REDACTED]) is a native and citizen of Ecuador, who entered the United States on or about November 1, 1989. On or about November 12, 1997, he departed the United States pursuant to an order of deportation. He re-entered the United States in about November 1999. On February 23, 2001, he married [REDACTED]. He was apprehended by the Newark Fugitive Unit and on August 15, 2003, he was removed from the United States. The applicant is inadmissible under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B) for being unlawfully present in the United States for more than one year, departing, and again seeking admission within 10 years of that departure, and seeks to apply for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to join his U.S. citizen wife in the United States.

The record reflects that on October 15, 2003, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) simultaneously with an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) with the district director. On November 22, 2004, the district director denied the Form I-212. On January 18, 2005, the district director denied the Form I-601. The applicant appealed both decisions to the AAO.

The regulation at 8 C.F.R. § 212.7(a)(1)(i) states that:

An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In addition, the regulation at 8 C.F.R. § 212.2(d) states that:

[A]n applicant for an immigrant visa who is not physically in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. . . . *if the applicant also requires a waiver under section 212 (g), (h), or (i), of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I-212 with the American consul having jurisdiction over the alien's place of residence.*

Emphasis added.

The record indicates that the applicant is not physically in the United States. Therefore, the appeal must be rejected as the Form I-601 was filed with the wrong office. Mr. [REDACTED] must file the Form I-601 simultaneously with the Form I-212 with the U.S. consulate in Ecuador.

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. *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 rejected.