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U.S. Citizenship
and Immigration
Services

[Redacted]

#3

FILE:

[Redacted]

Office: CHICAGO, IL

Date:

SEP 23 2008

IN RE:

[Redacted]

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:

SELF-REPRESENTED

PHOTOCOPY

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 waiver application was denied by the District Director, Chicago, IL. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared moot.

The applicant is a native and citizen of Honduras who entered the United States on March 25, 1999 and after being placed in removal proceedings, was released on his own recognizance. The applicant did not appear at his removal proceedings and was ordered removed on September 6, 2001. The applicant was found to be inadmissible to the United States pursuant to 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 been an alien present in the United States without being admitted or paroled. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife and children.

The district director found that the applicant was eligible for a waiver under section 212(i) of the Act and that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated June 17, 2004.

On appeal, the applicant's spouse asserts that she and the applicant cannot travel to Honduras for his immigrant visa interview until his waiver application is granted because they do not want to be subject to the 10-year bar on admission. She states that she will suffer extreme hardship if the applicant is found inadmissible to the United States. *Statement of the Applicant's Spouse*, dated June 22, 2004.

The AAO notes the District Director erred in finding the applicant eligible for a waiver of inadmissibility under section 212(i) of the Act. A section 212(i) waiver is only available to those applicants who are found to be inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation. There is no indication in the record that the applicant is inadmissible under this section.

Section 212(a)(6) of the Act, the section under which the director found the applicant inadmissible, provides in pertinent part:

(A) Aliens Present Without Permission or Parole

- (i) In General- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General is inadmissible.

There is no provision in the Act for a waiver of inadmissibility under this section.

In addition, the AAO cannot examine whether the applicant is eligible for a waiver of the ground of inadmissibility under section 212(a)(9)(B) of the Act for unlawful presence because the applicant is currently not subject to section 212(a)(9)(B) of the Act.

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. (*Emphasis Added*).

In the present application, the record indicates that the applicant entered the United States on March 25, 1999 and has never left the United States. The applicant currently has no legal status, but has not accrued unlawful presence as defined in the Act because he has not left the United States. Once the applicant departs the United States he will trigger the unlawful presence provision and will then be required to submit a waiver application under section 212(a)(9)(B)(v) of the Act. Until the applicant departs the United States he is not subject to section 212(a)(9)(B)(i)(II) of the Act and therefore, there is currently no need for a waiver application under this section of the Act.

As the applicant is not currently inadmissible under any ground of inadmissibility covered by the Form I-601, there is no reason to submit the Form I-601 at this time.

ORDER: The appeal is dismissed and the application declared moot.