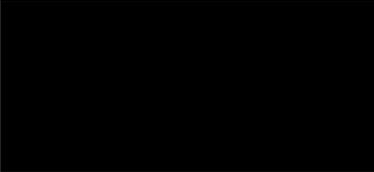


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Athens

Date: MAR - 7 2007

IN RE: Applicant: [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)

IN BEHALF OF APPLICANT: [Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

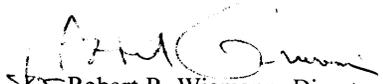
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Egypt 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 more than 1 year. The applicant divorced his first wife in Egypt on November 22, 2000. He married a native of Egypt and naturalized U.S. citizen in the United States on August 16, 2001, and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver under section 212(a)(9)(B)(v) of the Act on Form I-601.

The officer in charge determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

The record reflects that the applicant was admitted to the United States on August 26, 1997, as a nonimmigrant visitor with authorization to remain for six months. He failed to apply for or to receive an extension of temporary stay. He remained unlawfully present in the United States from February 25, 1997, to January 4, 1999.

On appeal, counsel states that the Service made no conclusions as to hardship in the life of the applicant or his U.S. citizen wife. Counsel states that it is inappropriate to consider the issue of the applicant's overstay in denying the waiver application. Hardship to the applicant is not a consideration in the present matter.

On appeal, counsel states that the Service abused its discretion by requesting the filing of the waiver application at the time of the interview. It is noted that the applicant's interview was conducted by a U.S. consular officer as required by regulation on January 2, 2002, and not by an officer of this Service.

The issue of inadmissibility is not the purpose of this proceeding. Issues of inadmissibility are to be determined by the consular officer when an alien applies for a visa abroad. This proceeding must be limited to the issue of whether or not the applicant meets the statutory and discretionary requirements necessary for the exclusion ground to be waived. 22 C.F.R. § 42.81 contains the necessary procedures for overcoming the refusal of an immigrant visa by a consular officer.

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

- (i) 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, whether or not pursuant to section 244(e), 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, or

(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 from the United States, is inadmissible.

(v) 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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 relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties 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 (entry without inspection) 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.

The record also reflects that the applicant applied for admission into the United States as a nonimmigrant visitor on November 20, 2001. It was determined that he was an intended immigrant and possessed documentation showing that he had been previously been employed without Service (now Bureau) authorization. He was removed from the United States under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). Therefore, he is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered expeditiously removed from the United States.

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240

initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

The applicant is also required to obtain permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), on Form I-212.

Bureau instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The operations instruction also provides that after receipt by a Bureau office, if grounds of inadmissibility other than those for which the waiver is sought are discovered, the application and all relating documents should be returned to the consular officer for reconsideration. This would also apply if certain grounds of inadmissibility are not applicable.

The present record does not contain evidence that the applicant has remained outside the United States for five consecutive years since the date of his removal as required by 8 C.F.R. § 212.2(a), or that he was granted permission to reapply for admission to the United States.

Therefore, since there is no evidence that the Form I-212 application has been adjudicated first and approved in this instance, the appeal of the officer in charge's decision denying the Form I-601 application will be rejected, and the record remanded so that the officer in charge may adjudicate the Form I-212 application first, or provide evidence for the record that a decision has already been made on the Form I-212.

If the officer in charge approves the Form I-212 application or provides evidence that such application has been approved, he shall certify the record of proceeding to the AAO for review and consideration of the appeal regarding the Form I-601 application. However, if he denies the Form I-212 application or provides evidence that such application has been denied, he shall certify that decision to the AAO for review, reject the Form I-601 application, and refund the fee.



ORDER: The appeal is rejected. The decision of the officer in charge is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.