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U.S. Citizenship
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[Redacted]

FILE:

Office: NEWARK

Date: SEP 22 2006

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i)

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 denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] (Mr. [REDACTED]) is a native and citizen of Colombia who entered the United States without inspection on or about February 17, 2002, and submitted an application for waiver of inadmissibility (Form I-601) on August 4, 2002. In order to remain in the United States with his U.S. citizen wife and child, the applicant seeks a waiver for having entered the United States without inspection.

On February 9, 2001, the applicant married his wife in Cali, Colombia. His wife filed a Form I-130 family visa petition on behalf of Mr. [REDACTED] on August 21, 2001. On February 7, 2002, Mr. [REDACTED] entered the United States without inspection from Mexico. His wife naturalized on March 24, 2003. The Form I-130 was approved on June 23, 2004. On August 9, 2004, Mr. [REDACTED] filed a Form I-601 on the basis that he entered the United States without inspection.

The director determined that the applicant is inadmissible under § 212(a)(6)(A)(i) for having entered without inspection and that he is not eligible to adjust status in the United States.

On appeal, counsel asserts that the applicant is an immediate relative because he is married to a U.S. citizen. Counsel further asserts that an immigrant visa is immediately available to him. Counsel asserts that the denial of the applicant's Form I-601 violates his wife's and daughter's constitutional rights.

In support of the Form I-601, Mr. [REDACTED] submits a hardship statement from his wife; a statement acknowledging that he entered the United States without inspection without meaning to circumvent the laws of the United States; several identity documents; the couple's marriage certificate; his wife's naturalization certificate; and their daughter's birth certificate.

The AAO notes that section 245(i) of the Act allows individuals who entered without inspection to adjust status, in the United States, if their Form I-130 petition was filed on or before April 30, 2001 and if they were physically present in the United States on December 21, 2000. The applicant's wife filed an I-130 petition for him on August 5, 2001, over 3 months past the deadline for relief under § 245(i). In addition, the applicant was not present in the United States until February 2, 2002. Counsel is correct that the applicant is an immediate relative and that he has an approved I-130. After the expiration of § 245(i) on April 30, 2001, however, in order to adjust status in the United States under § 245, the applicant must *have been admitted or paroled* into the United States. Under current law, an individual, even one married to a U.S. citizen, who enters the United States without having been admitted or paroled is not eligible to adjust status *in* the United States. He must apply for an immigrant visa at a U.S. consulate or embassy overseas.

Form I-601 is used when seeking a waiver for one of the following grounds of inadmissibility:

- § 212(h) for certain crimes in violation of § 212(a)(2)(A)(i)(I), § 212 (a)(2)(A)(i)(II), § 212 (a)(2)(B), § 212 (a)(2)(D), and § 212 (a)(2) (E) of the Act;

- § 212(i) for using fraud or misrepresentation to enter the United States in violation of § 212(a)(6)(c)(i);
- § 212(g) for health-related grounds under § 212(a)(1)(A)(i), § 212(a)(1)(A)(ii), and § 212(a)(1)(A)(iii); and/or
- § 212(a)(9)(B)(v) for having committed certain immigration violations, having departed the United States, and then seeking admission after departure under § 212 (a)(9).

Inadmissibility under section 212(a)(6)(A)(i) of the Act, for entry without inspection, is not a ground waivable through the use of Form I-601. There is no indication in the record that the applicant is inadmissible under any of the relevant sections. As such, the Form I-601 is moot.

The applicant has now accumulated over one year of unlawful presence. If he returns to Colombia to consular process, he will trigger the inadmissibility bar under § 212(a)(9)(B)(i)(II). At that point, he would need to file an I-601 waiver of inadmissibility.¹

ORDER: The appeal is dismissed, as the waiver application is moot.

¹ To establish eligibility for a waiver under section 212(a)(9)(B)(i)(II), an applicant must document more than the fact that he has a qualifying family member who would suffer extreme hardship if he were not admitted to the United States. He must submit objective evidence of the hardship his qualifying relatives would suffer. In addition, the applicant must establish that an exercise of discretion is warranted. Section 212(h) of the Act.