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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: PANAMA CITY, PANAMA Date: MAR 06 2007

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:

[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 waiver application was denied by the Officer in Charge, Panama City, Panama. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, as the waiver application is moot.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to § 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 more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

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, counsel asserts that the applicant is not inadmissible under § 212(a)(9)(B)(i) of the Act, because she was never unlawfully present in the United States. Counsel states that even if Citizenship and Immigration Services (CIS) finds that the applicant accrued unlawful presence, the record reflects that she accrued less than 180 days of unlawful presence; hence, she is not subject to the inadmissibility bar in the Act. Finally, counsel claims that the applicant's spouse is experiencing extreme emotional and financial harm due to the separation from the applicant, and that he would also experience extreme hardship if he relocated to Colombia to live with the applicant.

On appeal, counsel submits a copy of the applicant's passport, a notarized letter written by the applicant's husband, and notarized letters from various friends. The AAO has reviewed the evidence and concludes that, although the applicant may have accrued over 180 days of unlawful presence, she is not inadmissible to the United States as more than three years have passed since her November 2000 departure.

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

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> (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 1225(b)(1) or section 1229(a) of this title, 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 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.

The director's denial indicated that the applicant's February 11, 2005 consular interview resulted in a determination that she had entered the United States on February 18, 1999 but had not departed until November 11, 2000. Although the applicant claimed to have traveled to Egypt in March 1999 and returned to the United States in April 2000, she was unable to document this claim. The applicant indicated at her interview that she had lost her previous passport.

On appeal, the applicant submits a copy of her prior passport, which establishes that she was granted an Egyptian visa on March 24, 1999, visited Spain between October 14, 1999 and November 22, 1999, and entered the United States on November 22, 1999. The AAO notes that the Arabic-language stamps in the applicant's previous passport are not translated and, therefore, do not prove that the applicant traveled to Egypt beginning in March 1999.

The record now demonstrates that the applicant last entered the United States on November 22, 1999, not February 18, 1999. It does not, however, establish the length of her admission or offer any proof of the request for extension that she claims to have filed in May 2000. Accordingly, the applicant is unable to prove that she was lawfully in the United States between November 23, 1999 and November 12, 2000, a period of 355 days, which triggers the unlawful presence provisions of section 212(a)(9)(B)(i)(I) of the Act. However, as more than three years have passed since the applicant's November 2000 departure from the United States, the AAO finds that the applicant is no longer inadmissible to the United States. The applicant does not need to file the Form-601, Application for Waiver of Grounds of Inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 291 of the Act, 8 U.S.C. § 1361. On appeal, the applicant presents evidence that meets this burden. Accordingly, the appeal will be dismissed and the waiver application declared moot.

ORDER: The appeal is dismissed.