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

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[redacted]

FILE: [redacted] Office: MIAMI, FL Date: DEC 24 2008

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).

ON BEHALF OF PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica. She is the beneficiary of an approved Petition for Alien Relative, Form I-130, filed on her behalf by her U.S. citizen son. She presently seeks to adjust her status to lawful permanent resident of the United States on the basis of her son's petition, but she was found to be inadmissible to the United States 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).

The district director denied the application for adjustment of status, finding the applicant inadmissible and ineligible for a waiver. The district director noted that the applicant made several trips outside the United States after accruing unlawful presence, thereby triggering the unlawful presence bar. She last returned to the United States on March 21, 2003.

On appeal, the applicant, through counsel, maintains that she is not inadmissible. Specifically, the applicant states that she was authorized to travel abroad because she had a pending LIFE legalization application. The applicant indicates that as a LIFE legalization applicant who traveled on an Advance Parole, she is not subject to the unlawful presence bar.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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.

The record reflects that the applicant was unlawfully present in the United States for a period of over one year. The applicant does not dispute that she was unlawfully present in the United States. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. Instead,

the applicant maintains that, as a LIFE legalization applicant, she was authorized to travel on Advance Parole and not be subject to the unlawful presence bar.

The AAO notes that the applicant is currently seeking to adjust her status to lawful permanent resident on the basis of an approved Petition for Alien Relative filed by her son. Her application for adjustment of status under the LIFE Act was withdrawn. As such, the applicant is subject to the unlawful presence inadmissibility bar in section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9). Given her admitted unlawful presence, the AAO finds that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Having found that the applicant is inadmissible, the AAO must now address whether the applicant is eligible for a waiver under section 212(a)(9)(v) of the Act, 8 U.S.C. § 1182(a)(9)(v).[1] A waiver under this section is available to an applicant who "is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence." The applicant does not have a U.S. citizen or lawful permanent resident spouse or parent. Therefore, the applicant is ineligible for a waiver of inadmissibility under section 212(a)(9)(v) of the Act, 8 U.S.C. § 1182(a)(9)(v).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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 dismissed.

[1] The AAO notes that section 212(a)(9) of the Act does not provide for an exception from inadmissibility in cases where the applicant was unaware of, or misunderstood, the consequences of departing the United States.