identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H6

FILE: [redacted] Office: BANGKOK (MANILA) Date: APR 02 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen son and other family members.

The officer-in-charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge,* dated July 6, 2007.

On appeal, the applicant's son states that he and his family members will experience hardship if the present waiver application is denied. *Statement from the Applicant's Son*, dated July 30, 2007.

The record contains statements from the applicant, the applicant's son, and the applicant's granddaughter; copies of tax records for the applicant's son; a copy of the applicant's son's U.S. passport and naturalization certificate; copies of medical documents for the applicant; a copy of the applicant's passport and B-1/B-2 nonimmigrant visa, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) 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.

The record reflects that the applicant entered the United States in B-2 nonimmigrant status as a visitor for pleasure on September 17, 2002, with authorization to remain until March 16, 2003. In a Form I-601 Supplemental Questionnaire, the applicant provided that she applied for an extension of her stay with the U.S. Department of Homeland Security on February 23, 2007, and that her request was approved. However, the record does not contain any evidence that the applicant filed and was granted an extension of her B-2 nonimmigrant status. The applicant provided a copy of a US-VISIT record dated February 23, 2007, yet this document and the applicant's participation in the collection of biometric data through US-VISIT does not constitute an extension of her B-2 nonimmigrant status.

Accordingly, the applicant accrued unlawful presence from March 17, 2003, the date her B-2 nonimmigrant status expired, until she departed the United States in 2007. This period totals approximately four years. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her son on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Upon review, the applicant does not have a U.S. citizen or lawful permanent resident spouse or parent. Thus, she does not have a qualifying relative whose hardship may serve as a basis for a waiver under section 212(a)(9)(B)(v) of the Act. The record contains references to hardships that may be suffered by the applicant, the applicant's son, the applicant's granddaughter, and the applicant's great grandchildren. However, none of these individuals are qualifying relatives under section 212(a)(9)(B)(v) of the Act. Accordingly, the applicant has not shown extreme hardship to a qualifying relative and she is not eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely 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.