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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H2
H6

FILE: [redacted] Office: TEGUCIGALPA Date: FEB 25 2010

IN RE: Applicant: [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 Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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. Specifically, she entered the United States without inspection in or about May 1999, and she remained until or about January 2007, thus she accrued over seven years of unlawful presence. She now seeks a waiver of inadmissibility in order to enter the United States as a lawful permanent resident pursuant to a Form I-130 relative petition filed by her husband on her behalf.

The field office director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director,* dated April 22, 2008; *see* section 212(a)(9)(B)(v) of the Act.

The applicant filed the present appeal from the field office director's decision on May 21, 2008. However, on December 8, 2009, the applicant's husband notified United States Citizenship and Immigration Services that he wished to withdraw his Form I-130 relative petition on behalf of the applicant.

The Form I-130 petition formed the basis for the applicant's eligibility for admission to the United States as a lawful permanent resident. Without an approved Form I-130 petition, the applicant's present Form I-601 application for a waiver is moot. For this reason, the applicant has not shown that a purpose would be served in adjudicating her application for a waiver under section 212(a)(9)(B)(v) of the Act.

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, in that she has not shown that a purpose would be served in adjudicating her Form I-601 application for a waiver. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.