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

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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: GARDEN CITY, NEW YORK Date:

MAY 06 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Ground 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 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.

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 District Director, New York City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 43-year-old native and citizen of Egypt 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 in the United States for more than one year. The applicant claims marriage to a citizen of the United States, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and children in the United States.

The director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the application accordingly. *See Decision of the Director*, dated June 15, 2007. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on his wife and children. *See Form I-290B, Notice of Appeal*, dated June 28, 2007; *Legal Memorandum in Support of Waiver.*

The record contains, among other things, a copy of the couple's marriage certificate; divorce records; birth certificates for the couple's U.S. citizen children; a hardship statement by the applicant's wife; a supporting statement from the applicant; financial documents and tax records; family photographs; documentation relating to the applicant's employment; Egyptian country conditions information; and a Legal Memorandum in Support of Waiver. The entire record was reviewed and considered in rendering this decision on appeal.

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 [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 supports the director's determination that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act based on his unlawful presence in the United States for more than one year, and his departure from the United States. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 911 (BIA 2006). The record shows that the applicant was admitted to the United States on May 5, 1999, as a nonimmigrant visitor (B-2) with authorization to remain until May 19, 1999. The applicant's employer filed an Immigrant Petition for Alien Worker (Form I-140) on his behalf on August 15, 2002, and U.S. Citizenship and Immigration Services (USCIS) approved the petition on August 3, 2004. The applicant filed the related Application to Register Permanent Resident or Adjust Status (Form I-485) on August 15, 2002. The record reflects that the applicant was paroled into the United States after a trip abroad on August 15, 2005. The applicant accrued unlawful presence during the period from May 20, 1999, to August 14, 2002, when he did not have a pending application for adjustment of status.

On September 15, 2009, the director denied the Petition for Alien Relative (Form I-130), filed on the applicant's behalf by [redacted], based on the invalidity of the couple's marriage. *See Decision of the Director*, dated Sept. 15, 2009. Without an approved Form I-130 petition, the applicant's present Form I-601 application for a waiver is moot. The record also indicates that the applicant has no other qualifying relatives through which he would be eligible to apply for a waiver.[1] Accordingly, no purpose would be served in adjudicating the application for a waiver under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] On a G-325A, Biographic Information Form signed by the applicant on January 26, 2009, the applicant stated that both of his parents were deceased.