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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: JAN 11 2013 Office: ATHENS, GREECE FILE:

IN RE: Applicant:

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 APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and citizen of Pakistan 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 one year or more and seeking readmission within 10 years of his last departure from the United States.[1] The applicant's father is a United States citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated December 19, 2011.

On appeal, counsel for the applicant asserts that the applicant's father would experience extreme hardship if the applicant is not granted a waiver of inadmissibility. *Brief in Support of Appeal*, dated January 17, 2012.

The record includes, but is not limited to: counsel's brief, the applicant's statement, the applicant's father's statements, family letters, medical records for the applicant's parent, financial records and various immigration application forms. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) 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-
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> . . . .
>
> (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.

[1] The applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C.§ 1182(a)(9)(A)(ii) as an alien who has ordered removed under section 240 or the Act, or any other provision of law and who seeks readmission within ten years of such alien's removal from the United States.

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> (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 reflects that the applicant was admitted to the United States on January 19, 1990 as an L-2 non-immigrant spouse or child of an alien classified as an L-1, with authorization to remain for a maximum period of three years. The applicant filed for asylum on April 30, 1993. The applicant's asylum case was denied by an Immigration Judge on September 12, 1996 and he was then granted voluntary departure. The applicant filed a Motion to Reopen on February 28, 1997, which was denied on March 21, 1997. The applicant did not depart the United States voluntarily and accrued over one year of unlawful presence before he was removed on April 16, 2002.

The applicant accrued unlawful presence in excess of one year and he now seeks readmission. The applicant was therefore found to be inadmissible in accordance with section 212(a)(9)(B)(i)(II) of the Act. The applicant seeks a waiver of his inadmissibility based on section 212(a)(9)(B)(v) of the Act. However, the applicant departed the United States on April '16, 2002 and now seeks readmission over 10 years from that date. Accordingly, the 10-year period of inadmissibility based on section 212(a)(9)(B)(i)(II) of the Act has expired. Therefore, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and the present Form I-601 application for a waiver is unnecessary.[2]

In proceedings for application for 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is no longer inadmissible. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed, as the applicant is not inadmissible and the Form I-601 application is unnecessary.

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[2] As noted by the field office director, the applicant's removal from the United States on April 16, 2002 gave rise to a 10-year bar to admission under section 212(a)(9)(A)(ii) of the Act. However, as 10 years have passed since the applicant's last departure, his inadmissibility under section 212(a)(9)(A)(ii) of the Act expired. As the applicant filed two separate Form I-290B appeals, for his Form I-601 and I-212 applications, the appeal of the field office director's denial of his Form I-212 will be addressed in a separate decision.