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

U.S. Citizenship and Immigration Services

DATE: NOV 21 2013 OFFICE: LOS ANGELES, CA FILE:

IN RE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision will be affirmed.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the country without admission or parole. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility in order to live in the United States with his wife and child.

The Field Office Director determined that no waiver was available for the applicant's ground of inadmissibility under section 212(a)(6)(A)(i) of the Act and that the applicant provided no evidence that he is eligible to adjust his status to that of lawful permanent resident under any provision of law. The applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director*, dated September 9, 2011.

The AAO concurred with the Field Office Director that no waiver was available for the applicant's ground of inadmissibility under section 212(a)(6)(A)(i) of the Act and dismissed the appeal. *Decision of the AAO*, dated February 26, 2013.

On motion, filed on March 29, 2013, and received by the AAO on October 4, 2013, counsel cites the unlawful-presence provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 and section 212(a)(9)(B) of the Act to assert that the applicant accrued no unlawful presence before the age of 18 and before April 1, 1997. He also contends that because the applicant entered prior to the effective date of IIRIRA as a child and his entry was involuntary, the applicant's entry cannot be deemed unlawful. Further, counsel contends that a new I-601 waiver process allows individuals similarly situated to the applicant to file waivers in the United States without departing.

According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has stated reasons for reconsideration, the motion to reconsider will be granted.

Section 212(a)(6)(A)(i) of the Act provides in pertinent part:

> (6) Illegal entrants and immigration violators.-
>
> > (A) Aliens Present without admission or parole.-
> > > (i) In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time

> or place other than as designated by the Attorney General [now Secretary, Department of Homeland Security], is inadmissible.

Regulations at 8 C.F.R. § 212.7(a) and (b) provide that individuals seeking adjustment of status may use Form I-601 to file for waivers of inadmissibility under sections 212(g), (h), (i) and certain parts of section 212(a) of the Act. The regulations do not authorize the use of a Form I-601 application when an applicant for adjustment of status is inadmissible under section 212(a)(6)(A)(i) of the Act. There is no waiver available to an applicant who is inadmissible under section 212(a)(6)(A)(i) of the Act, either in statute or regulation. Moreover, because the applicant has not departed from the United States since 1986, section 212(a)(9)(B) of the Act does not apply to him. Accordingly, the applicant may not seek or receive a waiver of this ground of inadmissibility by filing the Form I-601 waiver application.

With respect to counsel's claim that the applicant may apply for an unlawful-presence waiver without leaving the United States, it appears that counsel is referring to Form I-601A, Application for Provisional Unlawful Presence Waiver. Certain immigrant-visa applicants who are spouses, children and parents of U.S. citizens may apply for provisional unlawful-presence waivers before they leave the United States. The provisional unlawful-presence waiver process allows individuals, who need only a waiver of inadmissibility for unlawful presence, to apply for a waiver in the United States before they depart for their immigrant-visa interviews at a U.S. embassy or consulate abroad. The applicant appears to be eligible to apply for a provisional waiver using the Form I-601A. The Form I-601 that the applicant filed, however, cannot be used in lieu of the new Form I-601A, and the AAO has no jurisdiction over the Form I-601A.

Concerning counsel's assertion that the applicant's involuntary entry into the United States at the age of eight "should not be deemed illegal," counsel offers no legal authority to support his position. However, the United States recently introduced a policy benefiting certain aliens who entered the United States as children and without inspection, Deferred Action for Childhood Arrivals (DACA). One of the requirements for consideration under DACA is that an applicant must have been under the age of 31 on June 15, 2012. As the applicant in this particular case was born on January 10, 1978, he would have been 34 years old on June 15, 2012; thus the applicant appears to be ineligible for consideration under DACA.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is granted and the prior AAO decision is affirmed.