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U.S. Citizenship  
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Services

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FILE:

Office: PANAMA CITY, PANAMA

Date:

DEC 15 2008

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility.

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).

*Michael Shumway*  
for

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Panama City, Panama. The matter was certified for review to the Administrative Appeals Office (AAO). The district director's decision will be withdrawn and the Form I-601 application will be declared moot. The matter will be returned to the district director for continued processing of the applicant's visa application.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II) and 1182(a)(6)(C)(ii)(I). The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined that the applicant had failed to establish a qualifying relative would experience extreme hardship if he were denied admission into the United States. The Form I-601 was denied accordingly.

On appeal the applicant's wife asserts that she and her U.S. citizen stepson will suffer extreme hardship if the applicant is denied admission into the United States.

Section 212(a)(6)(C)(ii)(I) of the Act provides in pertinent part that:

[A]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

No waiver exists for this ground of inadmissibility. Thus, if the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, no purpose would be served in adjudicating the merits of his waiver of inadmissibility claim under section 212(a)(9)(B)(v) of the Act.

With regard to the finding of inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act, the district director's decision states that:

On January 5, 1997, you were apprehended by the Boston Police Department and charged with domestic violence. You were fingerprinted and provided the Boston Police Department with a deceased woman's Social Security Number (XXX-XX-██████). In addition you stated or provided documentation indicating your birth date was July 28, 1969 and that you were born in Massachusetts, leading the authorities to believe that you were a United States Citizen. The charges of domestic violence were eventually dismissed in the Boston, MA Eastern District Court.

A Massachusetts Criminal History Systems Board record and a Boston, Massachusetts District Court disposition contained in the record reflect that the applicant was arrested in January 1997 and charged with Assault and Battery. The charge against the applicant was subsequently dismissed. The documents reflect that the applicant used the Social Security number referred to in the district director's decision. The documents fail, however, to establish that the applicant falsely represented himself to be a U.S. citizen. The documents do not refer to the applicant's citizenship or nationality.

Furthermore, both documents list the applicant's place of birth as Colombia. The AAO notes that the use or presentation to police of another person's Social Security number, which are issued to aliens in addition to citizens, does not, in and of itself, establish that the applicant falsely represented himself as a U.S. citizen for a purpose or benefit under federal or state law, or under the Act. The record contains no other evidence to indicate or establish that the applicant falsely represented himself as a U.S. citizen. The AAO therefore finds that the applicant is not inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

[A]ny 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.

The record contains evidence of several statements made by the applicant reflecting that he entered the United States unlawfully in May 1991 and that he remained in the United States until July 30, 1998, at which time he returned to Colombia.

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year . . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years. *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006).

The evidence reflects that the applicant was unlawfully present in the United States for more than one year between April 1, 1997 (the date section 212(a)(9)(B)(i) of the Act provisions went into effect) and July 30, 1998. The AAO notes however, that as of August 1, 2008, it has been more than ten years since the July 30, 1998 U.S. departure that gave rise to the applicant's inadmissibility. Evidence contained in the record corroborates the applicant's statement that he has been outside of the U.S. since July 30, 1998. The applicant's 2006 Form I-601 written and oral interview statements reflect that the applicant departed the United States on July 30, 1998. In addition, the applicant's immigrant visa documentation, filed overseas, reflects that he has lived and worked in Colombia since July 1998. Evidence of the applicant's marriage to his wife in Colombia in August 2005, and their son's birth in Colombia in May 2007 further supports the claim that the applicant has been outside of the United States since July 30, 1998. Accordingly, the applicant is now seeking admission more than ten years after the departure date which made him inadmissible. The applicant is therefore no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Because the applicant is not inadmissible under sections 212(a)(6)(C)(ii)(I) and 212(a)(9)(B)(i)(II) of the Act, the Form I-601 is moot.

**ORDER:** The application for waiver of inadmissibility is declared moot. The matter is returned to the district director for continued processing of the applicant's visa application.