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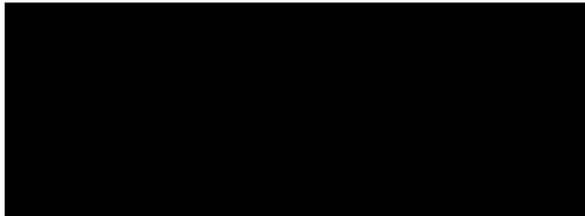
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:

Office: TEGUCIGALPA, HONDURAS

Date: JAN 14 2010

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:

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 Honduras 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 a period of one year or more and seeking readmission within ten years of his departure. The applicant's spouse is a U.S. citizen and he seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility. *Decision of the Field Office Director*, dated May 26, 2009.

On appeal, the applicant's spouse states that a denial of the applicant's waiver application will ruin and unbalance her family. *Form I-290B*, dated June 24, 2009.

The record includes, but is not limited to, statements from the applicant's spouse, her great aunt, the pastor at her church, and her son's babysitter; letters from an educational diagnostician, a medical doctor and a child psychiatrist regarding the applicant's son; a letter from a licensed professional counselor regarding the applicant's spouse; money transfer to the applicant in Honduras; and documentation of the applicant's spouse's finances, including a list of her financial obligations, copies of bills, a letter from her employer and a pay stub. The entire record was reviewed and considered in arriving at a decision on the appeal.

The field office director found the applicant inadmissible under section 212(a)(9)(B) of the Act, which states, 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 Attorney General [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 indicates that the applicant entered the United States without inspection in January 2001 and remained until he departed the United States in September 2008. Therefore, the applicant accrued unlawful presence from January 2001 until the date of his September 2008 departure. In that the applicant is seeking admission to the United States within ten years of his 2008 departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The record also indicates that, on November 26, 2009, the applicant entered the United States without inspection and was apprehended by immigration authorities near Brownsville, Texas. *Form I-213, Record of Deportable/Inadmissible Alien*, dated November 26, 2009. Accordingly, the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and reentering the United States without being admitted.

Section 212(a)(9)(C)(i) of the Act states, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien’s last departure from the United States if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien’s reapplying for admission....

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, an applicant must file for permission to reapply for admission (Form I-212). However, only those individuals who have remained outside the United States for at least ten years since their last departure are eligible for consideration. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The applicant in the present matter has not resided outside the United States for the required ten

years. As the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i) of the Act, the AAO finds no purpose would be served in considering the merits of his Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.