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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 04 2007

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Georgia who filed a waiver of inadmissibility in regard 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 and seeking readmission within 10 years of his last departure from the United States.

The director concluded that the applicant accrued sufficient unlawful presence for the 10 year bar, however, he did not depart the United States and he did not appear to be subject to the bar.¹ *Decision of the Director*, dated May 25, 2006.

On appeal, the applicant states that he departed the United States on November 9, 2005, he returned on November 15, 2005 and he has a U.S. citizen son. *Brief in Support of Appeal*, dated June 21, 2006. He also submitted documentation verifying his departure and return under advance parole.

The record includes, but is not limited to, the applicant's brief, letters of support, photographs and proof of travel outside of the United States. The entire record was reviewed and considered in arriving at a decision on the appeal.

The applicant entered the United States on a visitor visa on September 8, 2003 and his status expired on October 7, 2003. The applicant filed an adjustment of status application on September 14, 2005. The applicant departed the United States on November 9, 2005. The applicant accrued unlawful presence from October 7, 2003, the date his visitor status expired, until September 14, 2005, the date he filed the adjustment of status application. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year and subsequently departing the United States.

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-

....

(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 AAO notes that the director cited section 212(a)(9)(C)(i) of the Act, but the relevant section is section 212(a)(9)(B)(i)(II) of the Act.

(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.

As the applicant is not the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, he is ineligible for a section 212(a)(9)(B)(v) waiver. His U.S. citizen child is not a qualifying relative.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.