



U.S. Citizenship  
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[REDACTED]

FILE:

Office: NEWARK, NEW JERSEY

Date:

**APR 24 2008**

IN RE:

[REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, Newark (Cherry Hill), New Jersey, 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 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 subsequent to April 1, 1997. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with his spouse and his U.S. citizen children.

The record reflects that the applicant entered the United States without inspection in May 1994 and remained in the United States in unlawful status until he was granted Temporary Protected Status on November 18, 1999. The record reflects that while maintaining TPS status, the applicant departed from the United States and was paroled back into the United States on April 14, 2002. On February 5, 2005, the applicant's employer, [REDACTED] filed an Immigrant Petition for Alien Worker (Form I-140) on the applicant's behalf. The petition was approved on March 3, 2005. The applicant also filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on February 5, 2005. The applicant subsequently filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).

The district director concluded that the applicant had failed to demonstrate the existence of a qualifying relative—a U.S. citizen or lawful permanent resident spouse or parent—who will experience extreme hardship if the applicant is refused admission, and denied the application accordingly. *Decision of District Director*, dated December 20, 2005.

On appeal, counsel asserts that the intent of section 212(a)(9)(B)(v) of the Act, if not its language, is to protect the United States citizen children of inadmissible aliens. Counsel contends that the applicant has submitted sufficient information to warrant a waiver, and that denial of the waiver application constitutes infringement of the substantive and procedural due process rights of the applicant and his children. Counsel also asserts that the unlawful presence bars are not triggered by departures pursuant to TPS permission.

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

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or

(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 [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 stated above, the record reflects that the applicant entered the United States without inspection on August 13, 1995 and remained in the United States in unlawful status until he was granted Temporary Protected Status on November 18, 1999. The record reflects that while maintaining TPS status, the applicant departed from the United States and was paroled back into the United States on April 14, 2002. Thus, the applicant was unlawfully present from April 1, 1997 to November 18, 1999, a period in excess of one year, and subsequently sought re-admission to the United States. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The district director correctly determined that the applicant failed to demonstrate the existence of a qualifying relative—a U.S. citizen or lawful permanent resident spouse or parent—who will experience extreme hardship if the applicant is refused admission. There is no evidence that the applicant's spouse or parents are U.S. citizens or lawful permanent residents. Counsel cites no regulation, statute or legal precedent to support his assertions that the unlawful presence grounds of inadmissibility are not triggered by departures made pursuant to TPS status or that the applicant is eligible for a waiver of inadmissibility in spite of the fact that there is no qualifying relative as explicitly required by section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.