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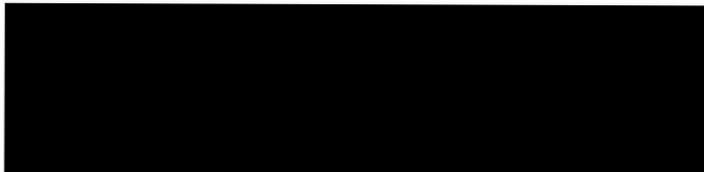
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: ATHENS, GREECE Date: DEC 05 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, 8 U.S.C. § 1182(a)(9)(B)(v)

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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Athens, Greece and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the officer-in-charge will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Egypt who entered the United States as a visitor for pleasure on April 17, 1992 with authorization to remain until October 16, 1992. He remained in the United States until July 4, 1999, when he returned to Egypt. He 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 more than one year. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to return to the United States and reside with his spouse.

The officer-in-charge found 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 (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated May 2, 2006.

On appeal, the applicant states that he was not unlawfully present in the United States from April 1, 1997 until he departed the United States on July 4, 1999, but had obtained work authorization as a result of his pending application for permanent residence, which was denied after he departed the United States. *See applicant's statement in support of Notice of Appeal to the AAO* dated May 27, 2006. He further states that his wife would suffer extreme hardship if he is not admitted to the United States. *Id.*

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-

(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 or removal, . . . is inadmissible.

(v) Waiver. - The Attorney General [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.

In the present case, the record indicates that the applicant entered the United States as a visitor for pleasure on April 17, 1992 and remained in the United States until July 4, 1999. On January 31, 1997, before the April 1, 1997 effective date of section 212(a)(9)(B) of the Act, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 21, 1999, after the applicant had departed the United States, the I-485 application, which was based on a Petition for Alien Relative filed by the applicant's former spouse, was denied.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of authorized stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations* dated June 12, 2002. Since the applicant filed the I-485 application before the unlawful presence provisions of the Act went into effect and departed the United States while the application was still pending, he never accrued unlawful presence in the United States. The applicant is therefore not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

ORDER: The appeal is dismissed, the prior decision of the officer-in-charge is withdrawn, and the application for a waiver of inadmissibility is declared moot.