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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: TEGUCIGALPA, HONDURAS

Date: SEP 09 2008

IN RE: Applicant: [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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, 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 entered the United States without inspection in December 2003 and remained until August 2005, when he voluntarily departed the United States. The applicant was thus found to be inadmissible to the United States under 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. 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 be able to reside in the United States with his U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, namely his U.S. citizen spouse, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated June 15, 2006.

On appeal, the applicant's spouse submitted the Form I-290B, Notice of Appeal (Form I-290B) and a letter in support. In addition, on September 5, 2006, the AAO received additional documentation in support of the appeal from the applicant's spouse.

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

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 on August 2, 2008, the applicant's U.S. citizen spouse sent a letter to the AAO, requesting a withdrawal of the instant appeal. With respect to appeals relating to Form I-601 applications, the applicant and/or his representative are the only individuals authorized to request that an appeal be withdrawn.<sup>1</sup> As such, the AAO is unable to withdraw the instant appeal based on the applicant's spouse's written request. However, as it appears that the applicant's spouse is no longer supporting the applicant's Form I-601 application, the AAO is unable to proceed with a review of the instant appeal, as outlined in section 212(i) of the Act, as extreme hardship to a qualifying relative, in this instance the applicant's spouse, can no longer be established.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.

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<sup>1</sup> The only application which the applicant's spouse may request be withdrawn with respect to the instant record is the Form I-130, Petition for Alien Relative (Form I-130).