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U.S. Citizenship and Immigration Services
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U.S. Citizenship
and Immigration
Services

H3

[REDACTED]

FILE: [REDACTED] Office: MIAMI (TAMPA), FLORIDA Date: APR 10 2009

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:

[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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The record reflects that 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than 1 year and seeking readmission within 3 years of his last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with his spouse, stepchildren, and grandchildren.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 28, 2006.

In the present application, the record indicates that the applicant entered the United States on August 9, 1998 without inspection. On July 8, 1999, the applicant filed an Application for Temporary Protected Status (Form I-821), which was approved on April 25, 2000. On May 26, 2000, the applicant filed another Form I-821. On June 11, 2001, the applicant filed another Form I-821, which was approved on March 26, 2004. On March 8, 2003, the applicant's Form I-821 was denied. On June 26, 2003, the applicant filed another Form I-821. On August 7, 2003, the applicant's naturalized United States citizen spouse filed a Form I-130 on behalf of the applicant. On February 9, 2004, the applicant filed a motion to reopen the denial of his Form I-821. On February 9, 2004, the Director, Texas Service Center, approved the motion to reopen. On May 23, 2004, the applicant's spouse filed another Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 21, 2005, the applicant's Form I-130 was approved. On September 22, 2005, the applicant withdrew his Form I-485. On October 31, 2005, the applicant departed the United States. On November 11, 2005, the applicant was paroled into the United States. On December 16, 2005, the applicant filed another Form I-485. On May 5, 2006, the applicant filed another Form I-821. On June 17, 2006, the applicant filed a Form I-601. On July 28, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant accrued more than 180 days of unlawful presence and he failed to demonstrate extreme hardship to his qualifying relative. On July 2, 2007, the applicant filed another Form I-821.

The AAO notes that the applicant accrued unlawful presence from August 9, 1998, the date the applicant entered the United States without inspection, until July 8, 1999, the date the applicant filed his first Form I-821. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act, for being unlawfully present in the United States for a period of more than 180 days. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure.

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 (whether or not pursuant to section 244(e)) 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, 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.

A review of the record reflects that the applicant is no longer inadmissible under 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I). The applicant departure from the United States occurred on October 31, 2005. It has now been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. Accordingly, the AAO finds that the applicant is not inadmissible. As such, the waiver application is moot and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(a)(9)(B)(v) of the Act is moot and need not be addressed.

ORDER: The appeal is dismissed, the decision of the District Director is withdrawn as it has not been established that the applicant is inadmissible, and the waiver application declared moot. The District Director is ordered to reopen the applicant's application for adjustment of status, and the matter is returned to the District Director for continued processing of the adjustment application.