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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

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

H3

FILE:

Office: MIAMI, FL

Date:

APR 13 2009

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:

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 that reads "Michael Shumway".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Colombia who 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is the parent of a U.S. citizen and the spouse of a lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The district director found that the applicant had been unlawfully present from September 28, 2000, the date his I-94 card indicates is the expiration of his status as a public interest parolee until August 9, 2002, the date he filed for adjustment of status. The application was denied accordingly. *Decision of the District Director*, dated September 13, 2006. The district director then found that the applicant failed to establish extreme hardship to a U.S. citizen parent as a result of his inadmissibility. *Id.* The AAO notes that the record, at the time of submission of the waiver application, did not indicate that the applicant had a U.S. citizen and/or lawful resident spouse or parent, but a U.S. citizen son.

On appeal, counsel asserts that the applicant did not accrue unlawful presence as his parole status was continually renewed at the request of the Drug Enforcement Agency (DEA), special agent [REDACTED]

*Notice of Expired Parole as of May 13, 2005*, [REDACTED], Director of International Affairs, Immigration and Customs Enforcement, dated June 7, 2005. In addition, counsel submits evidence of the applicant's lawful permanent resident spouse and the hardship she would suffer as a result of the applicant's inadmissibility. *Attachment to Form I-290B*, dated October 10, 2006.

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.

In the present application, the record indicates that the applicant entered the United States as a public interest parolee on June 29, 2000 with an authorized period of stay until September 28, 2000. On August 9, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On June 7, 2005, Immigration and Customs Enforcement issued a notice that the applicant's parole status expired on May 13, 2005. Thus, the applicant was in lawful parole status from June 29, 2000 to May 13, 2005 and did not accrue unlawful presence.

Therefore, as the applicant has not accrued unlawful presence, he is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's waiver of inadmissibility application is thus moot and the appeal will be dismissed.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The district director shall continue to process the applicant's adjustment application.