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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

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

H3

FILE:

Office: NEW DELHI, INDIA Date:

APR 22 2009

IN RE:

Applicant:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Officer-in-Charge, New Delhi, India, denied the Form I-601, Application for Waiver of Ground of Excludability under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). The matter 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 41-year-old native and citizen of India who was found inadmissible to the United States. The record reflects that the applicant's spouse, [REDACTED], is a U.S. citizen. The applicant's son and daughter are also U.S. citizens. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his wife. He seeks a waiver of inadmissibility in order to return to the United States.

The officer-in-charge correctly noted that the applicant was not inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1181(a)(6)(C). Nevertheless, the officer found the applicant to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1181(a)(9)(B)(i)(II), as an alien who was unlawfully present in the United States for a period of over one year. The officer further found that the applicant did not establish extreme hardship to his U.S. citizen spouse and therefore denied his application for a waiver of inadmissibility.

On appeal, the applicant has submitted statements in support of his hardship claim. See Form I-290B, Notice of Appeal to the AAO, and accompanying documents.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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.

.....
(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 the applicant was removed from the United States on April 13, 1999, and that he has remained outside the United States since his removal. The AAO notes that more than 10

years have elapsed since the applicant's removal. Therefore, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Having found that the applicant is no longer inadmissible, his application for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is unnecessary. This appeal must therefore be dismissed as moot.

ORDER: The appeal is dismissed as moot.