

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

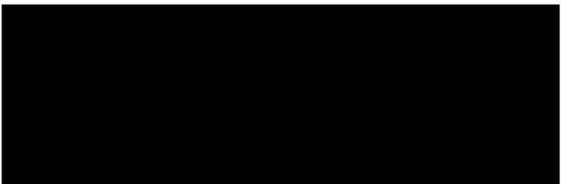
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3



FILE: [Redacted] Office: MEXICO CITY (PANAMA) Date: **FEB 19 2009**

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 PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the District Director will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Colombia who last entered the United States on February 25, 1989 as a visitor for pleasure. He remained in the United States after his period of authorized stay expired on February 25, 1990 and applied for asylum on November 8, 1993. His application was referred to the immigration judge and was pending until March 1, 1999, when the applicant was ordered removed *in absentia*. The applicant 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 Lawful Permanent Resident and father 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 wife and son.

The district director 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 District Director*, dated August 14, 2006.

On appeal, the applicant, through his son, asserts that he departed the United States on January 5, 1999 and was therefore not in the United States when he was ordered removed by the immigration judge on March 1, 1999. *See Letter from* [REDACTED] dated October 9, 2006. The applicant further asserts that he was not in the United States from 2004 to 2005 as determined by the District Director despite the fact that public records indicate that he was residing and owned a home in Philadelphia at that time. *See letter from* [REDACTED] The applicant states that he never resided at a Philadelphia address listed in public records and the home he and his wife previously owned was sold in 1999 after he left the country. *See letter from* [REDACTED] In support of the waiver application and appeal the applicant submitted the following documentation: Letters from his son, a letter from the applicant's bank in Colombia, a copy of the applicant's passport with a stamp indicating he returned to Colombia on January 5, 1999, a letter from the applicant, documentation related to the applicant's business in Colombia, an original airline ticket indicating the applicant flew from Newark, New Jersey to Cali, Colombia on January 5, 1999, and letters from the applicant's wife and former daughter-in-law. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

(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.

(iii) Exceptions.-

....

(II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

(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 B2 visitor for pleasure on February 25, 1989 and filed an application for asylum on November 8, 1993. The evidence submitted by the applicant with the appeal is sufficient to establish that he departed the United States on January 5, 1999, and there is no evidence that he returned to the United States after that date. It appears that the applicant's asylum application was still pending when he departed the United States on January 5, 1999, and he was therefore in lawful status from April 1, 1997, the date Section 212(a)(9)(B)(i) of the Act entered into effect, until he departed the United States. The AAO further notes that even if the applicant had accrued unlawful presence before his January 1999 departure from the United States, more than ten years has passed since he departed. The record appears to indicate that the applicant was never inadmissible under Section 212(a)(9)(B)(i)(II) of the Act, but even if he had been, it has now been more than ten years since his departure, and the applicant would no longer be inadmissible. The AAO notes, however, that the applicant was

ordered removed by the immigration judge *in absentia* on March 1, 1999. Since the applicant was ordered removed and is applying for admission within ten years of his removal order, he is required to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) with the district director if he seeks admission to the United States before March 1, 1999.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn, and the application for a waiver of inadmissibility is declared moot.