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

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[redacted]

FILE: [redacted] Office: TEGUCIGALPA, HONDURAS Date: JAN - 2 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Excludability 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 Officer-in-Charge, Tegucigalpa, Honduras, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility 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 the waiver application is moot.

The record reflects that the applicant is a 25-year-old native and citizen of Honduras who was found inadmissible to the United States for having been unlawfully present. The record reflects that the applicant's spouse, , became a United States citizen upon his naturalization on July 3, 2000. The couple was married on May 15, 2002. The applicant returned to Honduras on August 1, 2005, therefore becoming subject to the unlawful presence inadmissibility bar. She presently seeks a waiver of inadmissibility in order to return to the United States.

The officer-in-charge determined that the applicant was inadmissible, and that she was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to her spouse. The waiver application was denied accordingly.

On appeal, the applicant, through counsel, submits a brief explaining what hardships her husband has been experiencing since the couple's separation in 2005. The appeal is accompanied by a declaration from the applicant's husband, her daughter's birth certificate, a letter from her daughter's physician expressing concern about her separation from the applicant, a letter from the applicant's husband's employers, and a letter from her pastor.

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-
> >
> > > (I) has been unlawfully present in the United States for a period of more than 180 days but less than 1 years, voluntarily departed the United States ... and again seeks admission within 3 years of the date of such alien's departure . . . 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 officer-in-charge found the applicant inadmissible on the basis of her unlawful presence in the United States. The applicant first entered the United States without inspection in November 1998. On August 17, 1999, she applied for temporary protected status (TPS). Her TPS was granted on April 26, 2000. She maintained TPS until January 2005. The applicant was unlawfully present in the United States from November 16, 1998 until August 17, 1999, a period of 275 days.[1] She departed the United States in August 2005, thereby triggering the unlawful presence inadmissibility bar.

The AAO notes that more than three years have elapsed since the applicant returned to Honduras in August 2005. Therefore, she is no longer inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I). Under this section, an alien who has been unlawfully present for more than 180 days, but less than one year, is inadmissible for a period of three years.

Having found that the applicant is no longer inadmissible to the United States due to her previous unlawful presence, and no longer in need of the waiver, the AAO need not address her eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

The burden of proving admissibility to the United States and eligibility for a waiver rests with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is dismissed as the waiver application is moot.

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[1] A grant of TPS is designated as a period of stay authorized by the Attorney General. For TPS the period of stay authorized begins on the date a prima facie TPS application is filed with the Service. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.*