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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

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[REDACTED]

FILE:

Office: TEGUCIGALPA, HONDURAS

Date:

JUN 16 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 (the Act), 8 U.S.C. § 1182(a)(9)(B)

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.

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 Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Honduras. 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 after April 1, 1997. He 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 U.S. citizen spouse, child and stepchild.

The record reflects that the applicant entered the United States without inspection in June 1998 and remained in the United States unlawfully until his departure on July 9, 2008. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse. He filed an Application for Waiver of Grounds of Excludability (Form I-601) on July 15, 2008.

The field office director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of Field Office Director*, dated March 10, 2009.

On appeal, counsel submits additional evidence of hardship and asserts that the evidence is sufficient to merit a waiver of inadmissibility and remand to the field office director for reconsideration.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(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 Secretary, 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 reflects that the applicant entered the United States without inspection in June 1998 and remained in the United States unlawfully until returning to Honduras in July 9, 2008. The applicant

is now seeking admission to the United States. Therefore, the applicant was unlawfully present from June 1998 until July 9, 2008, a period in excess of one year. The applicant has not disputed that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The AAO notes, however, that subsequent to filing the appeal, the applicant was apprehended on June 4, 2009 when he attempted to enter the United States by presenting a U.S. passport and claiming to be a U.S. citizen. *See* Form I-213, *Record of Deportable/Inadmissible Alien*. The applicant is now in the custody of U.S. Customs and Border Protection.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(ii) Falsely claiming citizenship.—

(I) In General

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

There is no waiver of this ground of inadmissibility. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim of U.S. citizenship in order to procure entry to the United States, a benefit under the Act. Because this ground of inadmissibility cannot be waived, no purpose would be served in determining whether the applicant is eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.