



U.S. Citizenship
and Immigration
Services

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FILE:

Office: FRANKFURT Date:

NOV 01 2006

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: 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.

Robert P. Wiegmann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Frankfurt, Germany, denied the waiver application. The Administrative Appeals Office (AAO), dismissed the appeal of the denial of the waiver application. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decisions of the officer in charge and the AAO will be withdrawn and the application declared moot.

The applicant appears to be represented. However the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

The applicant is a native of Macedonia and citizen of Switzerland who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year. The applicant is married to a United States citizen, is the mother of a two United States citizens and she seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated January 16, 2004. On March 15, 2005, the AAO affirmed the officer in charge's decision on appeal. *See AAO's Decision*, dated March 15, 2005.

In the motion to reconsider, counsel contends that there is new evidence not previously available submitted with the motion to reconsider that establishes the applicant's spouse would suffer extreme hardship. *Applicant's Motion to Reconsider*, dated April 14, 2005. In support of the motion to reconsider, counsel submitted the above-referenced motion, a psychological report for the family, medical documentation with regard to the applicant's spouses' father, country conditions reports, tax and financial records for the applicant's spouse and documentation previously provided. The entire record was reviewed and considered in rendering a decision in this case.

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.

(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 application, the record indicates that, on March 9, 2001, the applicant was admitted to the United States as a Visa Waiver Pilot Program (VWPP) visitor. The applicant remained in the United States after her authorized stay expired on June 8, 2002. On April 2, 2003, the applicant departed the United States. The applicant accrued 298 days of unlawful presence from June 8, 2002, the date of expiration of her authorized stay, until April 2, 2003, the date of her voluntary departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of her departure.

An application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). There has been no final decision made on the applicant's Application for Immigrant Visa and Alien Registration (Form DS-230), so the applicant, as of today, is still seeking admission by virtue of her immigrant visa application. The applicant's departure occurred on April 2, 2003. It has been more than three years since the departure that made the inadmissibility issue arise in her application. A clear reading of the law reveals that the applicant is no longer inadmissible. She, therefore, does not require a waiver of inadmissibility, so the motion to reconsider will be granted, the previous decisions of the officer in charge and the AAO will be withdrawn and the application declared moot.

ORDER: The motion will be granted, the previous decisions of the officer in charge and the AAO will be withdrawn and the application declared moot.