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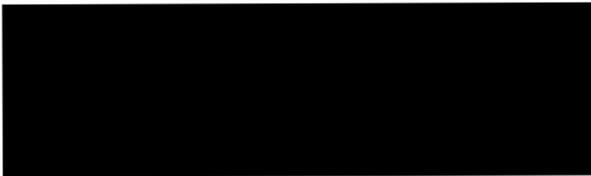
U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MOSCOW

Date: APR 06 2009

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Moscow, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Armenia who 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer in Charge*, dated June 30, 2006.

On appeal, the applicant's husband asserts that he will experience extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Husband on Form I-290B*, dated July 28, 2006.

The record contains statements from the applicant's husband; a copy of the applicant's passport, and; documentation regarding the applicant's entry to the United States. The entire record was reviewed and considered in rendering 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-

(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 reflects that the applicant entered the United States on June 30, 2000 in J status. She was admitted for duration of status (D/S). The applicant's husband was simultaneously admitted in J status, with an authorized stay until June 30, 2001. The officer in charge stated that "[a]s [the applicant's] husband was allowed to remain for one year, we presume that this also would have been the maximum amount of time that the applicant would have been allowed to stay without violating her status." *Decision of the Officer in Charge* at 2. The applicant stated that she departed the United States in or about August 2003. She seeks to reenter the United States as an immigrant pursuant to an approved Form I-130 relative petition filed by her new husband on her behalf. The district director deemed the applicant inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure.

Upon review, the record does not support that the applicant accrued unlawful presence or that she is inadmissible under section 212(a)(9)(B)(II) of the Act. The applicant was admitted for duration of status. "Nonimmigrants admitted to the United States for D/S begin accruing unlawful presence on the date the [U.S. Department of Homeland Security] finds a status violation while adjudicating a request for another immigration benefit, or on the date an immigration judge finds a status violation in the course of proceedings." *Memo from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, U.S. Department of Justice, Immigration and Naturalization Service, HQADN70/21.1.24-P* (March 3, 2000). The record does not show that the applicant was found to have violated her status until after she departed the United States, upon her application for an immigrant visa in Moscow. Thus, the applicant did not accrue unlawful presence while she was in the United States in J status for duration of status.

As the applicant has not accrued unlawful presence, she is not inadmissible under section 212(a)(9)(B)(II) of the Act. The record does not show that the applicant is inadmissible under any other provision of the Act.

Based on the foregoing, the applicant does not require a waiver under section 212(a)(9)(B)(v) of the Act.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The district director shall reopen the denial of the application for an immigrant visa on motion and continue to process the visa application.