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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



H4

FILE: [REDACTED] Office: MEXICO CITY (PANAMA)

Date: SEP 01 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States under 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 one year or more. The applicant is the beneficiary of an approved Petition for Alien Relative that was filed by her U.S. Citizen spouse and 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 return to the United States.

The district director concluded that the applicant 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 March 9, 2007.

On appeal the applicant asserted that her husband was suffering extreme hardship as a result of their separation and because of his medical condition. In support of the waiver application and appeal the applicant submitted letters from herself and her husband and letters from her husband's physicians. In support of an appeal to the Board of Immigration Appeals of a separate decision denying the applicant's Petition for Alien Relative, the applicant submitted a letter dated March 7, 2008 stating that her husband had been admitted to a hospice due to his deteriorating condition. Public records indicate that the applicant's husband died on April 8, 2008.

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

- (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 viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on an immigrant visa application that is, in turn, based on an approved Form I-130, Petition for Alien Relative. The Petition for Alien Relative filed on behalf of the applicant was approved, and the approval was subsequently revoked. The revocation of approval of the Form I-130 was upheld by

the Board of Immigration Appeals. If the Petition for Alien Relative had been approved, it would be subject to automatic revocation in accordance with 8 C.F.R. § 205.1(3)(i)(C) upon the petitioner's death on April 8, 2008. In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot. Further, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant no longer qualifies for a waiver under section 212(a)(9)(B)(v) of the Act because she no longer has a qualifying relative. Accordingly, the appeal will be dismissed as the applicant no longer has a qualifying relative and there would be no purpose served in granting a waiver of inadmissibility.

ORDER: The appeal is dismissed.