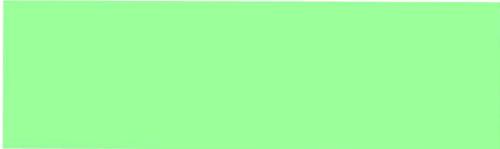




**U.S. Citizenship
and Immigration
Services**

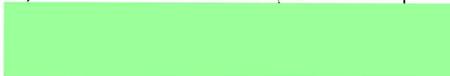
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DATE: FEB 01 2013 OFFICE: WASHINGTON, DC

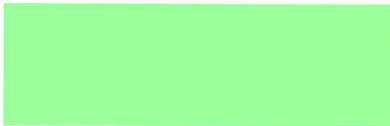


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), and under Section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, DC, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further proceedings consistent with this decision.

The applicant is a native and citizen of Italy 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 in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. She was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated July 25, 2011.

On appeal, counsel for the applicant contends that due to the spouse's poor medical condition, his age, as well as the applicant's assistance with his restaurant, he would experience extreme hardship upon separation from the applicant. Counsel additionally asserts that the applicant's spouse would be unable to relocate to Italy because of those medical conditions, his prospects for employment in Italy, the fact that he would have no legal avenue to immigrate to that country, and his business and family ties in the United States.

The record includes, but is not limited to, statements from the applicant and her spouse, medical, financial, and business records, a psychological evaluation, documentation of the applicant's admissions and attempted admissions into the United States, other applications and petitions, letters from family and friends, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

.....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant was admitted to the United States under the visa waiver program (VWP) on August 29, 1996, and was allowed to remain for 90 days. She returned to Italy on July 9, 1998. The applicant was subsequently admitted to the United States pursuant to the VWP on April 26, 2000, remained past the date of her authorized stay, and returned to Italy on September 3, 2001. The applicant requested and was denied admission into the United States in September 2001, July 2003, and in October 2003. She was admitted pursuant to the VWP on January 23, 2005, and has remained in the United States since that date. Inadmissibility is not contested on appeal. The AAO therefore finds the applicant accrued more than one year of unlawful presence, from April 1, 1997, the effective date of the unlawful presence provisions, until July 9, 1998. She is consequently inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In the present case, the record reflects that the applicant indicated on her July 18, 2003 and her October 7, 2003 Nonimmigrant Visa Waiver Arrival forms, that she had not been denied a U.S. visa or admission into the United States even though she had previously been refused admission on September 10, 2001. Inadmissibility is not contested on appeal. The applicant is therefore also inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In light of this, the AAO notes that in addition to the applicant's inadmissibility, the record contains indications that approval of her Form I-130, Petition for Alien Relative (Form I-130), needs to be revisited. The record reflects that in a 2003 interview for a non-immigrant visa at the United States Embassy in Guatemala City, Guatemala, the applicant noted that she had lived in Guatemala on and off since 1983 and had a Guatemalan ex-husband. This ex-husband was not listed in the Form I-130, nor did the applicant convey that she had an ex-husband in her Forms G325A, Biographic Information. In addition, the record does not contain any evidence regarding her divorce from this ex-husband. Without additional details and supporting documentation, the record does not clearly indicate that the applicant is legally married to her current spouse, the Form I-130 petitioner, and that she is eligible for classification as the spouse of a U.S. Citizen.

In light of the applicant's possible ineligibility for classification as the immediate relative of a U.S. Citizen, no purpose would be served in addressing her eligibility for waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Therefore, the AAO remands the matter to the Field Office Director to obtain further information on the applicant's first marriage and, if necessary, initiate proceedings for revocation of the approved Form I-130. Should the approved Form I-130 be revoked, the Field Office Director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be determined that the Form I-130 is not to be revoked, the Field Office Director will return the matter to the AAO in order to adjudicate the current appeal.

ORDER: The matter is remanded to the Field Office Director for further processing consistent with this decision.