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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**

H6

FILE:

Office: NEW DELHI, INDIA

Date: APR 06 2010

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 cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B), and the relevant waiver application is thus moot. The matter will be returned to the Acting Field Office Director for notification of the Immigrant Visa Unit at the American Embassy, New Delhi.

The applicant is a native and citizen of India 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 admission within ten years of his last departure from the United States. The applicant is married to a lawful permanent resident of the United States. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and family.

The Acting Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied on September 24, 2007.

On appeal, the applicant states that his bar to admission has expired.

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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
 - (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.

In the present matter, the record indicates that the applicant entered the United States as a nonimmigrant visitor in or about August 1992 and did not depart the United States until July 1998. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in July 1998. In that the applicant accrued more than one year of unlawful presence prior to his departure from the United States, section 212(a)(9)(B)(i)(II) of the Act barred him from seeking admission to the United States for ten years from the date of his 1998 departure.

A clear reading of the statute reveals that the applicant is no longer inadmissible to the United States based on his prior unlawful presence as more than ten years have passed since his departure. Based on the current facts, he does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The case is returned to the Acting Field Office Director so that he may notify the Immigrant Visa Unit, American Embassy, New Delhi.