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



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



H6

FILE:



Office: TEGUCIGALPA

Date:

APR 12 2010

IN RE:



APPLICATION:

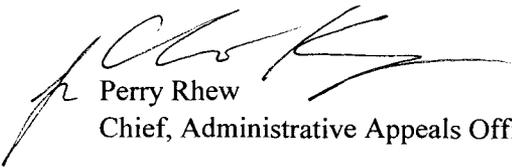
Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The applicant is a native and citizen of Nicaragua 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 his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States as a permanent resident pursuant to an approved Form I-130 relative petition filed by his wife on his behalf.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated December 5, 2007.

On appeal, the applicant's wife asserts that she is enduring significant hardship due to the applicant's absence from the United States. *Statement from the Applicant's Wife*, dated December 26, 2007. The applicant's wife further states that the applicant will have been out of the United States for 10 years since his last departure as of March 20, 2008. *Id.* at 1.

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-

(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, 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.

The record indicates that the applicant entered the United States without inspection in or about March 1986. He was subsequently deported on March 20, 1998. Accordingly, he accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until his departure on March 20, 1998. This period totals 11 months and 19 days.

As noted above, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. However, the applicant was not inadmissible under section 212(a)(9)(B)(i)(II) of the Act due to the fact that he did not accrue a total of one year of unlawful presence. However, the applicant accrued unlawful presence for a period of more than 180 days but less than 1 year, thus he was inadmissible under section 212(a)(9)(B)(i)(I) of the Act, and he was barred from reentry for three years from the date of his last departure. Accordingly, the applicant was inadmissible under section 212(a)(9)(B)(i)(I) of the Act until March 20, 2001.¹

As March 20, 2001 has passed, and the record does not show that the applicant has been in the United States since his deportation on March 20, 1998, he is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. The record does not show that the applicant is inadmissible based on other grounds. Accordingly, he does not require a waiver of inadmissibility and the present application for a waiver will be declared moot. As such, the applicant is free to apply for an immigrant visa pursuant to the approved Form I-130 relative petition filed on his behalf.

ORDER: The appeal is dismissed as the underlying waiver application is moot.

¹ Although the applicant was no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act as of March 20, 2001, he required permission from the Attorney General (now Secretary of the United States Department of Homeland Security) to reenter the United States for a period of five years after the date of his deportation on March 20, 1998. Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). As this period expired on March 20, 2003, the applicant no longer requires permission from the Secretary to reenter the United States due to his prior deportation.