

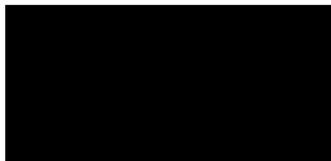
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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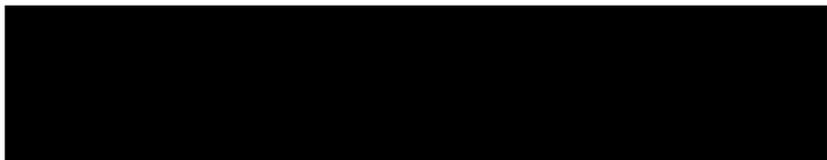


FILE: [REDACTED] Office: NEW DELHI, INDIA Date: AUG 02 2010

IN RE: Applicant: [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 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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Officer in Charge, New Delhi, India. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion will be granted and the waiver will be declared moot as the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The applicant is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 ten years of his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their United States citizen child.

The Acting Officer in Charge 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 accordingly. *Decision of the Acting Officer in Charge*, dated March 28, 2005.

In the Motion to Reopen/Reconsider, counsel contends that the decision of the Administrative Appeals Office (AAO) is flawed in that the AAO discounted the impact of the applicant's child illness when analyzing extreme hardship to the applicant's spouse. Counsel further notes that the applicant departed the United States in 1998 and that his family would suffer extreme hardship in India and the United States. *Form I-290B, Notice of Appeal to the AAO; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; published country conditions reports; a statement from a Sikh temple; a medical statement for the applicant's spouse; a statement from the applicant's spouse's landlord; statements from family members; medical statements for the applicant's child; and publications on medical conditions. 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.

In the present case, the record indicates that the applicant was admitted to the United States on a crew visa in 1991 and did not rejoin the ship. *Consular Memorandum, American Embassy, New Delhi, India*, dated September 25, 2002. He applied for asylum three to four months after arriving, which was ultimately denied in 1996. The memorandum reflects that he remained in the United States without legal status until he returned to India in January 2002. *Id.* However, counsel asserts that the applicant departed the United States in 1998, less than one year after the unlawful presence provisions were enacted. *Form I-290B*. On March 16, 2010 the AAO issued the applicant a Request for Evidence to provide documentation supporting that he departed the United States for Canada in 1998. In response to this Request for Evidence, counsel submits the following documentation on behalf of the applicant: a Conditional Departure Order, Citizenship and Immigration Canada, dated July 21, 1998; a letter regarding employment authorization granted by Citizenship and Immigration Canada, dated August 26, 1998; a Canadian Temporary Driver's License, dated September 30, 1998; a Canadian Driver's License, dated March 26, 1999; a Canada Customs and Revenue Agency Notice of Assessment, dated July 17, 2000; an employment letter and record of employment dated May 24, 2003, reflecting employment from February 3, 1999 to September 2, 2001; a Canada Customs and Revenue Agency Statement of Remuneration Paid, dated 2001; a 2001 Personal Tax Credits Return, dated May 22, 2001; a Regional Police Criminal Record Search, dated August 31, 2001; a Canada Customs and Revenue Agency Statement of Account, dated December 5, 2001; a Direction to Report, Citizenship and Immigration Canada, dated January 14, 2002; a Notice of Removal and Profile, Citizenship and Immigration Canada, dated January 17, 2002; and a copy of the applicant's Indian passport issued April 6, 2001 showing Vancouver, Canada as the place of issue.

The record does not include evidence that the applicant departed the United States prior to July 21, 1998, when he was in Canada as reflected by his Canadian Departure Order. The burden of proof is on the applicant to establish otherwise. As such, the AAO finds that the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until July 21, 1998, the earliest date that the record reflects that he was outside of the United States.

The applicant's departure from the United States occurred in 1998. Therefore, it has been more than ten years since his departure raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible based on his prior unlawful presence as more than ten years time passed since his departure. Based on the current facts, he does not require a waiver of inadmissibility and the waiver application is moot.

ORDER: The motion to reopen/reconsider is granted. The underlying waiver application is moot.