

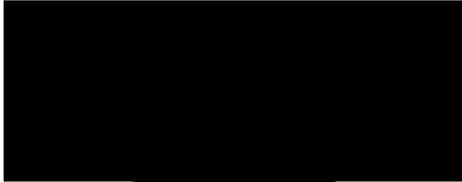
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



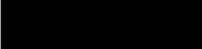
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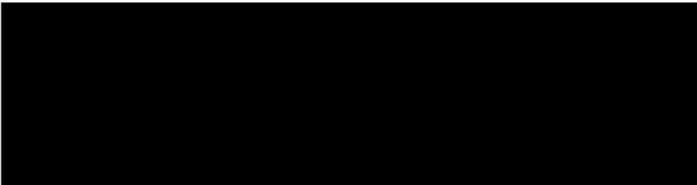
IN RE: Applicant:



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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Albany, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action consistent with this decision.

The record establishes that the applicant, a native and citizen of Malaysia, admitted to having entered the United States without authorization in 1981, departed the United States in 1987, re-entered the United States without inspection in 1987 and remained until May 1999, when he departed the United States voluntarily. The record further reflects that the applicant re-entered the United States with a B-2 nonimmigrant visa in May 1999. The field office director determined that based on the applicant's admission, the applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in May 1999. The applicant was thus 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for a Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 27, 2007.

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.

....

(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....

Subsequent to filing the above-referenced appeal, the record establishes that in August 2009, the applicant submitted a new Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen spouse, [REDACTED]. The new Form I-485 was approved on February 2, 2010 and the applicant was granted lawful permanent resident (LPR) status. There is no indication in the record that a new Form I-601 was filed.

As noted above, the field office director had previously found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for unlawful presence. Based on the field office director's prior finding of inadmissibility, the matter will be remanded to the field office director to determine whether the Form I-485 filed in August 2009 was approved in error, as the field office director's finding of inadmissibility due to unlawful presence does not appear to have been reviewed and/or resolved prior to granting the applicant lawful permanent resident status.

**ORDER:** The matter is remanded to the field office director to determine whether LPR status was properly granted to the applicant in February 2010. If the I-485 was properly approved, the June 27, 2007 denial of the Form I-601 is moot and the instant appeal of the denial of the waiver will be dismissed. If the Form I-485 was improperly approved, the field office director shall proceed accordingly with respect to the revocation of the applicant's LPR status and return the appeal of the Form I-601 to the AAO for review.