

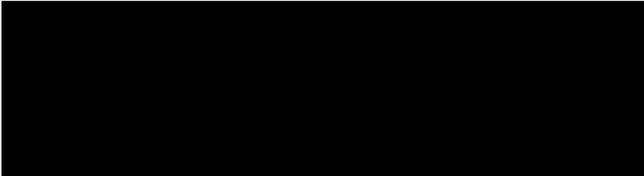
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



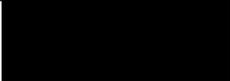
U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 18 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)

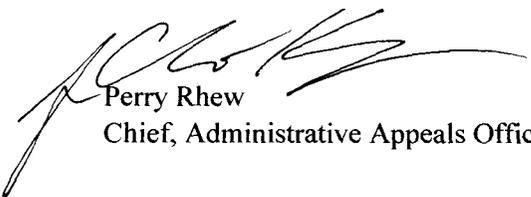
ON BEHALF OF APPLICANT:



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 waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the director for continued processing.

The applicant is a native and citizen of Jamaica 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 lawful permanent resident pursuant to an approved Form I-130 relative petition filed by his daughter on his behalf.

The 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 Director*, dated March 22, 2007.

On appeal, counsel for the applicant asserts that the applicant's lawful permanent resident wife and U.S. citizen daughter will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, received in April 2007.

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 on or about October 16, 1990 as a B-2 nonimmigrant visitor for pleasure, with authorization to remain until April 15, 1991. He did not depart the United States within his authorized period. On or about July 14, 1997, he filed a Form I-485 application to adjust his status to lawful permanent resident as a special immigrant religious worker based on an approved Form I-360 special immigrant petition. The applicant departed the United States on or about July 19, 1999, and on July 31, 1999 he was paroled back in for an indefinite period as an applicant for adjustment of status. The record does not show that the applicant departed the United States after he was paroled on July 31, 1999. On January 22, 2004, his Form I-485 application was denied due to his failure to submit requested evidence.

In July 2005, the applicant filed a second Form I-485 application to adjust his status to lawful permanent resident, pursuant to an approved Form I-130 relative petition filed by his daughter on his behalf. The director denied the second Form I-485 application based on a finding that the applicant was inadmissible due to unlawful presence. Specifically, in the decision to deny the second Form I-485 application, the director stated that: “Having been denied the earlier adjustment of status application and departing the United States in 1999 has made [the applicant’s] unlawful presence more than 360 days; therefore, [the applicant has] accumulated more than one year of unlawful presence and [is] inadmissible under Section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act.” *Director’s Decision to Deny the Applicant’s Form I-485 Application*, dated March 22, 2007. The director did not discuss the applicant’s unlawful presence in the decision to deny his Form I-601 application for a waiver. *Decision of the Director* at 2. The director cited section 212(h)(1)(B) of the Act, yet this section of law is not relevant to waiver proceedings due to inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Upon review, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The unlawful presence provisions in the Act took effect on April 1, 1997, thus the applicant did not accrue unlawful presence before that date. As he was not in a lawful status on April 1, 1997, he began to accrue unlawful presence on that date. His unlawful presence ceased on the date that he filed his first Form I-485 application, July 14, 1997. Accordingly, he accrued approximately 104 days of unlawful presence during this period. The applicant departed the United States in July 1999, yet this departure did not render him inadmissible under sections 212(a)(9)(B)(i)(I) or (II) of the Act, as he did not accrue more than 180 days of unlawful presence. The record does not show that the applicant has departed the United States since his return in July 1999.

Based on the foregoing, the applicant is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) 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.

**ORDER:** The appeal is dismissed as the underlying waiver application is moot. The director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.