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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

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HR HB

FILE: [REDACTED] Office: GUATEMALA CITY Date **MAY 27 2010**

IN RE: [REDACTED]

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 for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, the waiver application will be declared moot, and the appeal will be dismissed.

The applicant is a native and citizen of Guatemala 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 with his lawful permanent resident father.

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 January 31, 2008.

On appeal, the applicant asserts that his father will experience extreme hardship should the present waiver application be denied. *Statement from the Applicant on Form I-290B*, dated February 25, 2008.

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 1994. He remained until or about March 1999. Accordingly, he accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until his departure in March 1999. This period totals over one year.

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. As the applicant's last departure was in March 1999, he was inadmissible under section 212(a)(9)(B)(i)(II) of the Act until March 2009. As March 2009 has passed, and the record does not show that the applicant has been in the United States since he departed in March 1999, he is no longer 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 director's decision is withdrawn, and the waiver application is declared moot because the ten-year period for which the bar to admission was in effect against this applicant has passed. The appeal is dismissed.