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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
and Immigration
Services

HLK

[Redacted]

FILE: [Redacted]

Office: HARTFORD, CT

Date: OCT 04 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:

[Redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tariq Syed

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Brazil 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 in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a citizen of Brazil and the mother of three children. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her husband and children.

The Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated August 31, 2009.

On appeal, the applicant, through counsel, contends that the Field Office Director abused his discretion by failing to adjudicate the applicant's husband's Application for Permanent Residence or Adjust Status (Form I-485) prior to the applicant's Form I-485. *Form I-290B*, filed September 25, 2009. Counsel further claims that the Field Office Director "erred in concluding that evidence in the record did not support a finding of extreme hardship." *Id.*

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant, her husband, and children; letters of support for the applicant and her husband; a mental health evaluation and medical documentation for the applicant's husband; insurance documents, investment documents, wage statements, bank statements, and tax documents; and a 2008 U.S. Department of State country report on Brazil. The entire record was reviewed and considered in arriving at 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 [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.

On October 11, 1996, the applicant was admitted to the United States in B-2 nonimmigrant status with an authorized period of stay until April 10, 1997. In November 1999, the applicant voluntarily departed the United States. On December 2, 1999, the applicant was admitted to the United States in B-2 nonimmigrant status. The applicant accrued unlawful presence from April 10, 1997, the date her authorized period of stay expired, until November 1999, the date she departed the United States. Based on the record, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that an applicant is the spouse or son/daughter of a United States citizen or lawful permanent resident of the United States. The record in the present case indicates that the applicant is married to a citizen of Brazil, and she is not the daughter of a United States citizen or lawful permanent resident of the United States. Accordingly, the AAO does not find the record to establish that the applicant has a qualifying relative under section 212(a)(9)(B)(v) of the Act. Consequently, she is ineligible for a waiver under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.