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



U.S. Citizenship
and Immigration
Services

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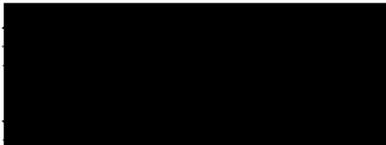
DATE: **MAY 17 2011** OFFICE: NEW YORK, NY

FILE:

IN RE:

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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.

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 \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under 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 admission within ten years of his last departure. The applicant is the father of a U.S. citizen. He 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 remain in the United States.

The District Director found that the applicant had failed to establish that he had a qualifying relative for the purposes of a section 212(a)(9)(B)(v) waiver proceeding and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *Decision of the District Director*, dated November 1, 2010.

On appeal, counsel contends that the applicant is no longer charged with being present in the United States for a period longer than admitted in violation of section 237(a)(1)(B) of the Act. She asserts that as the Form I-862, Notice to Appear, has been amended to reflect inadmissibility under section 212(a)(7)(I)(I) of the Act, the basis for the ten-year bar to the applicant's admission has been eliminated. Counsel states that she will submit a brief within 30 days. *Form I-290B, Notice of Appeal or Motion*, dated December 1, 2010. As of this date, more than 30 days have elapsed since the filing of the appeal and no brief is found in the record. Accordingly, the AAO will consider the record complete.

The record includes, but is not limited to, counsel's addendum to the Form I-290B; tax returns, W-2 forms, and earnings statements for the applicant; documentation relating to the applicant's automobile insurance; medical records for the applicant; copies of telephone and utility bills; and bank statements. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states 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.

The record reflects that, on August 29, 1997, the applicant was admitted to the United States on a B-2 nonimmigrant visa, valid until February 28, 1998. The applicant did not depart the United States until March 13, 2003, when he sought admission to Canada as an asylum applicant. Based on this history, the AAO finds that the applicant accrued unlawful presence beginning on March 1, 1998, the day after his nonimmigrant visa expired, until he departed the United States on March 13, 2003 and triggered the unlawful presence provisions of section 212(a)(9)(B)(i) of the Act.

Although we note counsel's claim that the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) has been eliminated with the amendment of the Form I-862 to reflect a charge of inadmissibility under section 212(a)(7)(i)(I) of the Act, we observe that removal proceedings and those that determine admissibility under section 212(a) of the Act are separate processes, governed by distinct regulations and procedures. Accordingly, the basis on which an individual is removable from the United States does not determine the ground(s) on which he or she may be found inadmissible under section 212(a) of the Act. In the present case, the applicant remained in the United States for more than one year beyond the validity of his B-2 visa and then departed. As he is seeking immigrant admission to the United States within ten years of 2003 departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and must seek a section 212(a)(9)(B)(v) waiver.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

In the present case, the record reflects that the applicant's parents are deceased and that his spouse is a citizen of Pakistan. Although, the applicant lists his U.S. citizen daughter, [REDACTED] on the Form I-601, she is not a qualifying relative for the purposes of a 212(a)(9)(B)(v) waiver proceeding. As the applicant does not have a U.S. citizen or lawful permanent resident parent or spouse, he is not eligible to apply for a waiver of his inadmissibility under 212(a)(9)(B)(i) (II) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the

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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.