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

H/6



DATE: **APR 04 2012** OFFICE: NEW YORK, NEW YORK

File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

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 as moot.

The applicant is a native and citizen of Pakistan 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)(I)(II), for having been unlawfully present in the United States for one year or more, and again seeking admission within 10 years of his last departure from the U.S. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the District Director*, dated October 14, 2009.

On appeal, counsel asserts that the applicant's spouse will "suffer great hardship" if the applicant is deported. See *Form I-290B*, Notice of Appeal or Motion, received November 4, 2009.

The record contains but is not limited to: Forms I-601, I-485 and denials of each; hardship affidavit; employment verification letters; character reference letters; wage and tax records; birth, divorce and marriage records; billing statements; Form I-130; and records pertaining to prior Forms I-130, I-485 and withdrawal of both. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- ...

(I) has been unlawfully present in the United States for a period of more than 180 days but less than one year, voluntarily departs the United States (whether or not pursuant to section 244(e)) prior to 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 is inadmissible.

...

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection in February 1991. The applicant filed a Form I-485, adjustment of status application in February 1998. The applicant traveled outside the United States on or before May 28, 2000, October 5, 2002 and December 23, 2005, re-entering the U.S. on each occasion on advance parole in order to continue his adjustment of status. The applicant has not departed the United States since December 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until February 1998. As the applicant was unlawfully present in the United States for more than 180 days but less than one year, he is found to be inadmissible under section 212(a)(9)(B)(i)(I) of the Act. The AAO notes that the Field Office Director erroneously found that the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

An application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The AAO notes that the Field Office Director denied the applicant's Form I-485 application on the same date as the denial of the Form I-601 application. The applicant was not afforded the opportunity to pursue the appellate process prior to the denial of the Form I-485. The AAO finds that the denial of the Form I-485 was premature and that, as of today, the applicant is still seeking admission by virtue of adjustment from his parole status. The applicant's last departure from the United States occurred in December 2005. It has now been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

The AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act. Accordingly, the appeal will be dismissed as the waiver application filed pursuant to section 212(a)(9)(B)(v) of the Act is moot.

Because the AAO finds that the applicant is not inadmissible and the appeal will be dismissed as moot, there remains no basis in the present record for the denial of the applicant's Form I-485, application for adjustment of status. Accordingly, the applicant's file will be returned to the Field Office Director for further action consistent with this decision.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The applicant's application for adjustment of status will be returned to the Field Office Director for continued processing consistent with this decision.