



**U.S. Citizenship  
and Immigration  
Services**



H6

DATE: **DEC 20 2012** OFFICE: NEW DELHI, INDIA

FILE: [REDACTED]

IN RE:                      APPLICANT: [REDACTED]

APPLICATION:            Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Acting Field Office Director for further proceedings consistent with this decision.

The applicant is a native and citizen of India 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 10 years of his last departure from the United States. The applicant was also found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) as he was ordered removed in 1998 and departed the United States in 2006. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The Acting Field Office Director concluded the applicant failed to establish the existence of extreme hardship to a qualifying relative given his inadmissibility and denied the application accordingly. *See Decision of Acting Field Office Director* dated September 15, 2011.

On appeal, counsel for the applicant submits a brief in support, medical and psychological records, and a death certificate. In the brief, counsel indicates the applicant's father has passed away. Counsel moreover states that the applicant's mother would experience extreme hardship if the present separation continues, and in the event of relocation to India.

The record includes, but is not limited to, the documents listed above, other applications and petitions, documentation of removal proceedings, evidence of birth, marriage, residence, and citizenship, and statements from the applicant's parents. 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-

....

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the

Attorney General or is present in the United States without being admitted or paroled.

....

(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 July 1992, and returned to India on January 5, 2006. The AAO therefore finds that the applicant accrued more than one year of unlawful presence, from April 1, 1997, the effective date of the unlawful presence provisions, until his departure on January 5, 2006. The applicant's qualifying relatives for a waiver of this inadmissibility are his lawful permanent resident parents.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In the present case, the record reflects that the applicant is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker, in which the petitioner sought to classify him as a skilled worker under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i). The applicant later admitted under oath that he is not a skilled worker, he was a shift manager and also had experience as a mechanic. In the denial of the Form I-601 the Acting Field Office Director indicated that the applicant may not be qualified for classification as a skilled worker under section 203(b)(3)(A)(i) of the Act. That issue is not before the AAO and will therefore not be addressed. Without an approved Form I-140, no purpose is served in adjudicating the Form I-601.

Therefore, the AAO remands the matter to the Acting Field Office Director to determine whether it is necessary to initiate proceedings for the revocation of the approved Form I-140 petition. Should the approved Form I-140 petition be revoked, the Form I-601 will be moot as the applicant will lack an underlying petition for an immigrant visa. In the alternative, should it be determined that the Form I-140 is not to be revoked, the Acting Field Office Director will certify the appeal of the Form I-601 to the AAO for review.

**ORDER:** The matter is remanded to the Acting Field Office Director for further proceedings consistent with this decision.